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7
 8 **UNITED STATES DISTRICT COURT**
 9 **CENTRAL DISTRICT OF CALIFORNIA**

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 CLERK U.S. DISTRICT COURT
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 SANTA ANA
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11 AVINASH B. KULKARNI,) CASE NO.: SACV12-00980 CJC(MLGx)
 12 Plaintiff Pro Se) COMPLAINT FOR:
 13 V.) RELEASE OF USDOS NON-PERSONAL
 14 UNITED STATES) INFORMATION WITH EVIDENCE OF
 15 DEPARTMENT OF STATE) CHILD ABDUCTION;
 16 (USDOS)) JUDICIAL REVIEW OF USDOS' DENIAL
 17 Defendant) OF PLAINTIFF'S REQUEST FOR
 18) INFORMATION;
 19)
 20) **APPLICABLE LAW: VARIOUS**
 21) 5 U.S.C. § 552 (FOIA); 5 U.S.C. § 552a
 22) (Privacy Act); FIRST, FIFTH, NINTH AND
 23) FOURTEENTH AMENDMENTS TO THE
 24) UNITED STATES CONSTITUTION; CAL.
 25) CONSTITUTION ARTICLE I § 28(a)(4)

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1 Now comes Plaintiff, MR. AVINASH B. KULKARNI, and for the request for a
 2 judicial review and release of information made herein, states as follows:

3 4 I. INTRODUCTION

- 5 1. Plaintiff seeks information regarding abduction of his then six-month old child
 6 from Orange County, California to India in 1990. Plaintiff believes that the
 7 child's U.S. passport was acquired fraudulently, and seeks to know who paid
 8 for it and where it was mailed.
- 9 2. Plaintiff filed a similar complaint in this Court in 2011 (Case No. SACV11-
 10 01389 JST (ANx)). The USDOS argued, and the Court concurred, that
 11 Plaintiff had failed to exhaust his administrative remedies including an
 12 administrative appeal with the USDOS prior to filing that complaint. The
 13 Court dismissed that complaint without prejudice (Exhibit A, pages 19-20).
- 14 3. Plaintiff has since exhausted his administrative remedies. He filed a request
 15 for information under 5 U.S.C. § 552, Freedom of Information Act (FOIA),
 16 with the USDOS on October 8, 2011 (Exhibit B, pages 35-38) and provided
 17 supplemental input on October 19, 2011 (Exhibit B, pages 40-53). The
 18 USDOS denied his request on October 25, 2011 (Exhibit B, pages 55-57).
 19 Plaintiff filed a request for reconsideration on October 28, 2011 (Exhibit B,
 20 pages 59-60). The USDOS denied it on December 19, 2011 claiming
 21 exemptions under FOIA and 5 U.S.C. § 552a, Privacy Act (Exhibit B, page
 22 62). Plaintiff filed an administrative appeal on January 4, 2012 explaining his
 23 right to information under *both* statutes and requesting its release under either
 24 statute (Exhibit B, pages 22-33). The USDOS denied Plaintiff's Appeal on
 25 May 2, 2012, once again claiming exemptions under both statutes (Exhibit C,
 26 page 102).

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II. CLAIM FOR RELIEF

4. Court's Jurisdiction – Plaintiff's son was born in Mission Viejo, California in 1990. The infant son lived with Plaintiff in El Toro, Orange County when the child was abducted outside the United States. Plaintiff seeks information pertaining to the abduction. Plaintiff submits that the Court has jurisdiction over a crime committed in Orange County and a claim arising out of that crime. Since Plaintiff has exhausted his administrative remedies with the USDOS, the Court has jurisdiction, pursuant to 5 U.S.C. § 552(4)(B), to review the USDOS' denial of Plaintiff's request and Appeal. Further, the Court has jurisdiction to review Plaintiff's request under exceptions to the Privacy Act, specifically, Routine Use Exception (subsection (b)(3)) and Health and Safety Exception (subsection (b)(8)). Further, the Court has jurisdiction to order the USDOS to release the requested information pursuant to 5 U.S.C. § 552a(b)(11).
5. Plaintiff's Right to Information Sought – Plaintiff seeks information that may contain evidence of the crime of abduction of his only child more than twenty years ago. This information will assist him in his ongoing quest for reunification with his son and justice. As a parent whose fundamental constitutional right (per the First, Fifth, Ninth and Fourteenth Amendments to the United States Constitution) to have and raise a child has been violated permanently, and as a victim of a *continuous* crime (per 18 U.S.C. §§ 1204, 3283 – International parental kidnapping and its statutory limit; Cal. Penal Code §§ 278, 279.1), Plaintiff's interest in and right to this information is most compelling. As a victim of a violent crime, Plaintiff has a right to this information, per California Constitution, Article I, Bill of Rights, Section 28(a)(4). Further, per the annual report submitted by the USDOS to the United States Congress on international child abduction, approximately 1,600

children are abducted outside the U.S. every year. Tens of thousands of victims (both abducted children and left-behind parents) suffer silently for the rest of their lives. The United States Government spends significant resources supposedly investigating and managing these cases, supposedly providing support to victims, and conducting research to understand and fight the widespread problem. The problem of international child abduction is of public interest. Plaintiff's FOIA request will shed light on why such abduction takes place. Further, information sought here is no person's personal information. Further, law enforcement agencies have consistently failed to conduct a proper investigation and Plaintiff's only recourse, after over twenty years of victimization, is through this Court. Plaintiff has a right to this information under provisions of the FOIA as well as the Privacy Act.

6. Relief Sought – Plaintiff seeks relief from this Court in the form of release of information as identified in Section V, Request for Information.

III. STATEMENT OF FACTS

7. Plaintiff, AVINASH KULKARNI, lived in Orange County, California in 1990 with his then wife, NEELAM KULKARNI (a.k.a. NEELAM THAKUR), at 21141 Canada Road #13D, El Toro, California 92630. Their son, SOUMITRA, was born in March, 1990 in Mission Viejo, California. Soumitra is a United States citizen.
8. Soon after the child's birth, Neelam applied for Soumitra's U.S. passport, unbeknownst to Plaintiff, with intent to abduct the child outside the United States. On October 15, 1990, using that passport, Neelam abducted six-month old Soumitra, Plaintiff's only child, to India without Plaintiff's knowledge or consent. Plaintiff never saw his child again.

9. India does not recognize child abduction by a parent as a crime, and refuses to accede to the international law on child abduction, namely, the Hague Convention of 1980 on the Civil Aspects of International Parental Abduction (Hague Convention) even today. Plaintiff's attempts to have his child returned to the United States, or, in the alternative, to establish a relationship with and custodial/visitation rights to his son, failed as a result. Plaintiff's experience is typical for child abduction to India. The Office of Children's Issues (OCI) within the USDOS is officially designated as the Central Authority for the United States for the Hague Convention, and is the most authoritative source of information on international child abduction. Based on hundreds of cases of child abduction to India, the OCI has posted the following observations on its official web site (Exhibit D, page 106). (Emphasis added.)

"India is not a signatory of the Hague Convention on the Civil Aspects of International Parental Abduction; therefore, left-behind parents must rely on other avenues to recover their children from India. **Once a child has been abducted to India, remedies are very few.** India does not consider international parental child abduction a crime, and the Indian courts rarely recognize U.S. custody orders, preferring to exert their own jurisdiction in rulings that tend to favor the parent who wants to keep the child in India. For these reasons, **it is often very difficult for left-behind parents in the United States to obtain any access to a child who has been abducted to India.** In the rare scenario that a case is resolved, it is usually due to an agreement between the parents, rather than the result of court orders or arrest warrants. The State Department can help by attempting welfare and whereabouts visits; however, these visits may only be conducted with the consent of the child's physical guardian."

- 1 10. In the months and years after the abduction, the Orange County district
2 attorney's office (OCDA) showed no interest in conducting an investigation,
3 filing charges or even seeing Plaintiff.
- 4 11. Neelam applied for and received a United States visa in 1998 at the U.S.
5 Consulate in Mumbai, India. Mr. William Fleming from the OCI informed
6 Plaintiff about her impending visit to the U.S. Mr. Fleming did not know
7 when and where in the U.S. Neelam would visit. The OCI was managing the
8 case as child abduction at the time and was supporting Plaintiff's requests for
9 welfare visits to his son in India through the Mumbai Consulate. Yet, not only
10 did the U.S. Consulate grant Neelam, an abducting parent, a visa, but it failed
11 to inform Plaintiff, a left-behind parent, whereabouts of his abducted child
12 while the child was brought back to the U.S.
- 13 12. Neelam made her stealthy trip to Orange County in 1998 with the child.
14 Plaintiff was not aware of her whereabouts in spite of his efforts to do so.
15 Both Mr. Fleming and Plaintiff contacted the OCDA numerous times to get
16 them to act. But that office showed no interest in pursuing the matter.
17 Neelam and Soumitra returned to India two months later. Plaintiff's child was
18 thus re-abducted to India.
- 19 13. Plaintiff has recently found out that, during that visit, Neelam and Soumitra
20 stayed with Neelam's sister (Ms. Madhavi Nerurkar) and Madhavi's then-
21 husband (Mr. Rajesh Nerurkar) who had moved to Orange County in 1997.
- 22 14. Plaintiff filed for and got a civil judgment from Honorable Kim Dunning of
23 the Superior Court of Orange County in 2001, against Neelam and her mother
24 for abducting his child. After hearing about that judgment, the OCDA invited
25 Plaintiff for an interview for the first time – almost eleven years after the
26 abduction started. The OCDA still did not file any charges. Repeated
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1 attempts by the OCI (in 2003 and 2006) and Plaintiff to get that office to act
2 were unsuccessful.

3 15. The OCDA finally filed charges against Neelam in 2008 – more than
4 seventeen years after the abduction started. Neelam came to the U.S. that year
5 and was arrested at the Los Angeles Airport.

6 16. Neelam pled guilty to the felony crime of child abduction on July 24, 2009
7 under Cal. Penal Code § 278.5(a) stating “... on and between October 15,
8 1990 & March 25, 2008, [she] unlawfully took, kept, withheld Soumitra K., a
9 child, maliciously & unlawfully depriving Avinash Kulkarni, a lawful
10 custodian, of his right to custody.” (Exhibit B, page 47.)

11 17. Plaintiff continues to seek reunification with his son, but without success. The
12 young man’s brainwashing and alienation are complete and irreversible. After
13 listening to Soumitra and Plaintiff during Neelam’s plea offer hearing on June
14 12, 2009, Honorable Thomas Goethals of the Superior Court remarked that
15 “the son would have been far better off with long-term legitimate unpolluted
16 exposure to his father”. While commenting on Soumitra’s brainwashing, the
17 judge repeatedly remarked that “the well has been grossly poisoned”.

18 18. Plaintiff recently learned that Neelam’s friends aided and abetted in the
19 abduction in 1990, including acquisition of the infant’s passport. Plaintiff
20 sought to establish the truth. His FOIA request was a result of this new
21 discovery. The OCDA has refused to conduct any further investigation or file
22 charges against Neelam’s coconspirators.

23 19. Plaintiff is already in possession of all information from 1990 that can be
24 called Soumitra’s personal information, including his birth certificate and
25 medical records. Plaintiff is aware of his child’s place of birth as Plaintiff was
26 present in the hospital room at child birth and was the first person (other than
27

the medical staff) to hold the newborn. Plaintiff is aware of child's true address in 1990 as the child lived with Plaintiff.

20. Plaintiff helped Soumitra in acquiring a social security number in 2007 while Soumitra still lived in India. Plaintiff worked with the OCI, the Social Security Administration offices in Baltimore and Manila, Philippines, and the U.S. Consulate in Mumbai, India. When the SSN was issued to Soumitra at the U.S. Consulate, Plaintiff could have easily asked his son for the number, but he did not. Plaintiff specifically advised Soumitra to treat it with confidentiality and not share it through insecure channels such as the internet.
21. During the federal matter referenced earlier in this document (Case No. SACV11-01389 JST (ANx)), Assistant U.S. Attorney Mr. David Pinchas, informed Plaintiff that he had discussed Plaintiff's FOIA request with the attorney for the child's alleged abductors including Soumitra's aunt, Ms. Madhavi Nerurkar, and that that he contacted Soumitra through this attorney.

IV. LEGAL BASES

a. Plaintiff's FOIA Request is Valid and Exemption 6 Does not Apply.

22. In its denial letter dated December 19, 2011 (Exhibit B, page 62) as well as in its denial of Plaintiff's Appeal (Exhibit C, page 102), the USDOS cited FOIA Exemption 6 without providing any rationale or specifics. It cited Department of State v. Washington Post Co., 456 U.S. 595 (1982) as the basis for its decision. (Exhibit B, page 62.) The *Washington Post* court, while ruling that passport files are similar to personnel or medical files (Id. 601), also stated that "denial of the request should have been sustained *upon a showing by the Government* that release of the information would constitute a clearly unwarranted invasion of personal privacy." (Id. 603.) (Emphasis added.) In

1 the same ruling, the Supreme Court also cited from its previous ruling in
 2 Department of Air Force v. Rose, 425 U.S. 352 (1976). The Rose court stated
 3 as below. (Id. 372.) (Emphasis added.)

4 “[w]e find nothing in the wording of Exemption 6 or its legislative
 5 history to support the Agency's claim that Congress created a blanket
 6 exemption for personnel files. Judicial interpretation has uniformly
 7 reflected the view that *no reason would exist for nondisclosure in the*
 8 *absence of a showing of a clearly unwarranted invasion of privacy,*
 9 *whether the documents are filed in "personnel" or "similar" files.*

10 ...

11 "Congressional concern for the protection of the kind of confidential
 12 personal data usually included in a personnel file is abundantly clear.
 13 But Congress also made clear that nonconfidential matter was not to
 14 be insulated from disclosure *merely because it was stored by an*
 15 *agency in its 'personnel' files.*"

16 In the present matter, the USDOS has failed to meet its burden to show how
 17 Plaintiff's request would result in a clearly unwarranted invasion of personal
 18 privacy that will result in real injury or harm.

19 23. While denying Plaintiff's Appeal, the USDOS stated that “[n]o non-exempt,
 20 meaningful information can be segregated from the exempt material and
 21 released.” (Exhibit C, page 102.) The *Rose* court discussed congressional
 22 intent as below.

23 [Citation] Congress' recent action in amending the Freedom of
 24 Information Act to make explicit its agreement with judicial decisions
 25 requiring the disclosure of nonexempt portions of otherwise exempt
 26 files is consistent with this conclusion. Thus, 5 U. S. C. § 552 (b)
 27 (1970 ed., Supp. V) now provides that "[a]ny reasonably segregable
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portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt under this subsection." And § 552 (a) (4) (B) (1970 ed., Supp. V) was added explicitly to authorize *in camera* inspection of matter claimed to be exempt "to determine whether such records *or any part* thereof shall be withheld." (Emphasis supplied.) The Senate Report accompanying this legislation explains, without distinguishing "personnel and medical files" from "similar files," that its effect is to require courts "to look beneath the label on a file or record when the withholding of information is challenged. . . .

". . . [W]here files are involved [courts will] have to examine the records themselves and require disclosure of portions to which the purposes of the exemption under which they are withheld does not apply." S. Rep. No. 93-854, p. 32 (1974). [Citation]

Plaintiff requests the Court to conduct an *in camera* review of the entire passport file and determine which portions are relevant to Plaintiff's request and can be released.

24. In its letter denying Plaintiff's Appeal, the USDOS cited 22 C.F.R. § 171, subsection 12(a) which is a provision for FOIA requests (Exhibit C, page 102). Plaintiff submits that the subsection violates congressional intent as well as the Supreme Court's interpretation of FOIA. It creates the very blanket exemption for all passport records that the Congress did not intend and the Supreme Court clearly ruled against. The *Washington Post* court, citing the *Rose* court, stated that "the protection of Exemption 6 is not determined merely by the nature of the file in which the requested information is contained." (Id. 601). Further, the information in dispute is neither personal nor was provided by Soumitra in 1990, and could possibly be fraudulent.

1 Plaintiff submits that the requirement in 22 C.F.R. § 171.12(a) should be
2 interpreted in the context of whether the information sought is of intimate or
3 personal nature, was provided truthfully, and whether its disclosure will result
4 in an unwarranted invasion of personal privacy by causing real injury or harm.

5 25. Based on events described in Paragraph 21, Plaintiff reasonably suspects that
6 the abductors are manipulating the system by using Soumitra to block
7 potential evidence of their crimes coming to light. DOJ research on child
8 abduction recognizes that, after years of brainwashing, an abducted child
9 relates to his or her abductors, sympathizes with them and blames the left
10 behind parent. Soumitra has no privacy interest in the identity of his abductors
11 and will not be harmed in any manner if it is disclosed.

12 26. The USDOS advised Plaintiff to pursue justice through the OCDA (Exhibit C,
13 pages 102-103). This solution, however well-intentioned, is irrelevant to
14 Plaintiff's right to know the identity of his child's abductors. Further, that
15 advice is quite odd in light of passage of time, and lack of interest and action
16 by the OCDA. The USDOS has witnessed many of the events described in
17 Paragraphs 10 – 14, and is quite aware that the OCDA will not act. Although
18 the OCDA took very belated and limited action in 2008, it has never
19 conducted a proper investigation. Plaintiff has wondered many times how
20 different his life would be, had government agencies taken meaningful actions
21 during Neelam's stealthy visit to the United States in 1998. His request cannot
22 be held at the mercy of any law enforcement agency. To the contrary, lack of
23 proper investigation by government agencies and their disregard for Plaintiff's
24 constitutional rights are strong reasons in support of Plaintiff's request, as he
25 has no other recourse to establish facts. His request for information is based
26 on his constitutional right as a victim of a violent crime (Cal. Constitution,
27 Article I, Sec. 28(a)(4); Plaintiff's FOIA Appeal, Exhibit B, page 32).

27. Further, although Plaintiff has established his compelling personal interest in and right to this information, it is not the primary basis for his FOIA request. Plaintiff has explained how international child abduction is a widespread social problem (Paragraphs 5, 9; Exhibit B, pages 37-38). The USDOS is aware of its breadth in terms of how many lives are impacted as well as its depth in terms of emotional, psychological, social and financial impact on victims. Clandestine aiding and abetting by local social networks has been established as being common among cases of international child abduction. Plaintiff's request for information will potentially expose how such networks work and is in public interest. While denying Plaintiff's request, the USDOS has effectively violated its own stated public policy to assist victims of international child abduction and to fight this social problem.

b. Requested Information Is Not Soumitra's Personally Identifiable Information.

28. The USDOS has sought to apply a blanket exemption to information that was not even created or provided by Soumitra. The *Washington Post* court assumed that "[s]uch files would contain at least the information that normally is required from a passport applicant." (Id. 601.) (Emphasis added). That is not the case here. Six-month old Soumitra was *not* the passport applicant in 1990. His abductors applied for his passport fraudulently without his knowledge, consent or even comprehension. He had no say in the matter. They did so without Plaintiff's knowledge or consent, a custodial parent.

29. Plaintiff has demonstrated that he very much respects his son's privacy rights (Paragraph 20). Plaintiff submits that such confidentiality does not apply to the information he seeks. Requested information is not Soumitra's Personally Identifiable Information (PII). Per 5 FAM 463, PII is defined as

“[i]nformation which can be used to distinguish or trace an individual's identity, such as their name, Social Security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.” In the present matter, information about who paid for a passport in 1990 and where it was mailed does not fall in this category. It pertains as much to Plaintiff as it does to the abducted child. Both of them have been victims of the same violent crime. In his communication with the USDOS, Plaintiff showed willingness to alter his request to exclude any information that might be deemed personal (Exhibit B, pages 30 and 60). The USDOS ignored Plaintiff’s reasonable proposal. Plaintiff is in possession of Soumitra’s PII from 1990 (Paragraph 19). If a different home or mailing address was provided in the passport application, it was fraudulent and cannot be categorized as PII.

c. Plaintiff’s Personal Interest In This Information Is Compelling And The Information Should Be Released Under Privacy Act Exceptions.

30. While the USDOS’ decision essentially created a six-month old child’s “right to be abducted”, quite odd given the OCI’s legal responsibilities as the Central Authority under the Hague Convention, it ignored Plaintiff’s fundamental right as a parent to have and raise a child. In *Doe v. Irwin*, 441 F Supp 1247; U.S. D.C. of Michigan, (1985), the court stated as below. (Id. 1251.)

“The rights... are at the heart of our nation's traditions and collective conscience. It needs no further discussion to conclude that the right of parents to the care, custody, and nurture of their children is of such a character that it cannot be denied without violating those fundamental principles of liberty and justice which lie at the base of all our civil

and political institutions. As such, the rights... are fundamental rights protected by the First, Fifth, Ninth, and Fourteenth Amendments of the United States Constitution.”

31. The USDOS, in its denial letter dated December 19, 2011 (Exhibit B, page 62), stated that the requested information “would be exempt from release under ... possibly the Privacy Act (Title 5 USC Section 55a [sic])”. In his Appeal, Plaintiff explained his compelling personal interest and his right to the requested information under exceptions to the Privacy Act for Routine Use as well as Health and Safety, even *without* Soumitra’s written authorization (Exhibit B, pages 29-31). The USDOS’ denial of Plaintiff’s Appeal is silent on this issue. However, it repeated its prior position regarding the Privacy Act and cited 22 C.F.R. § 171, subsection 32(c)(1) which is a provision for Privacy Act requests (Exhibit C, page 102). The USDOS failed to address Plaintiff’s right to information under Privacy Act exceptions. Plaintiff submits that, even if the information is to be treated as Soumitra’s personal information, which it clearly is not, it should be released to him under the exceptions cited in Plaintiff’s Appeal.

V. REQUEST FOR INFORMATION

32. Plaintiff respectfully requests this Court to order the USDOS to submit in this Court, under seal, Soumitra Kulkarni’s passport records from 1990 including all supporting documents submitted with the passport application. Plaintiff prays the Court to conduct an in camera review of those records and release the following information to Plaintiff:

- (a) Date on which the application for passport was filed in 1990
- (b) Place where the application was filed
- (c) Name(s) of person(s) filing the application

1 (d) Address that was provided as Soumitra Kulkarni's home address, if it is
2 different than the address specified in paragraph 7

3 (e) Name of the person who paid the passport application fee

4 (f) Mode of payment for the application fee (e.g. personal or cashier's check,
5 etc.)

6 (g) Date on which the said passport was issued

7 (h) Name of the person to whom the passport was mailed

8 (i) Address to which the passport was mailed
9

10 WHEREFORE Plaintiff, Avinash Kulkarni, prays the Court to conduct a judicial
11 review and grant the requested relief.
12

13 Respectfully submitted,

14 DATED: June 18, 2012

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16 _____

17 AVINASH B. KULKARNI

18 PLAINTIFF PRO SE
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EXHIBIT A

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 11-1389-JST (ANx)

Date: December 14, 2011

Title: Avinash B. Kulkarni v. United States Department of State

Present: **Honorable JOSEPHINE STATON TUCKER, UNITED STATES DISTRICT JUDGE**

Ellen Matheson
Deputy Clerk

N/A
Court Reporter

ATTORNEYS PRESENT FOR PLAINTIFF: ATTORNEYS PRESENT FOR DEFENDANT:

Not Present

Not Present

**PROCEEDINGS: (IN CHAMBERS) ORDER (1) GRANTING DEFENDANT'S
MOTION TO DISMISS (DOC. 11), AND (2) DENYING AS
MOOT DEFENDANT'S EX PARTE APPLICATION
(DOC. 22)**

On November 8, 2011, Defendant United States Department of State (the "State Department") filed a Motion to Dismiss the First Amended Complaint (the "FAC") in this action pursuant to Federal Rule of Civil Procedure 12(b)(1) for lack of subject matter jurisdiction and Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim. (Doc. 11.) The Court finds this matter appropriate for decision without oral argument. Fed. R. Civ. P. 78(b); C.D. Cal. R. 7-15. Accordingly, the hearing set for December 19, 2011, at 10:00 a.m. is VACATED. For the reasons set forth below, the Court GRANTS the State Department's Motion to Dismiss without prejudice.

On September 28, 2011, Plaintiff Avinash Kulkarni ("Plaintiff") filed his FAC against the State Department seeking the disclosure of certain documents under the Freedom of Information Act, 5 U.S.C. § 552, *et seq.* (the "FOIA") that pertain to a passport issued in 1990 to Plaintiff's then-infant son. (FAC ¶¶ 1, 5-7, 16, Doc. 5.) On October 8, 2011, after filing the FAC, Plaintiff submitted a FOIA request to the State Department seeking the information requested in the FAC. (Pinchas Decl., Ex. 1, Doc. 11.) The State Department denied Plaintiff's request on October 25, 2011. (*Id.*, Ex. 2.) Plaintiff filed a request for reconsideration on October 28, 2011, which is currently pending before the State Department. (*Id.*, Ex. 3.) Plaintiff also has a right to appeal the State Department's denial of his request pursuant to the procedure outlined in 22 C.F.R. § 171.52. Pursuant to § 171.52(c), any "appeal should be received within 60 days of the

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. SACV 11-1389-JST (ANx)

Date: December 14, 2011

Title: Avinash B. Kulkarni v. United States Department of State

date of receipt by the requester of the Department's denial." That time has not yet expired as to the October 25, 2011 denial of Plaintiff's request.

The Ninth Circuit has made clear that "exhaustion of a [party's] administrative remedies is required under the FOIA before that party can seek judicial review." *In re Steele*, 799 F.2d 461, 465 (9th Cir. 1986). Administrative remedies under the FOIA include administrative appeals of an adverse response to a document request. *See Bettwieser v. Lucas*, No. 07-35964, 2010 WL 510623, at *1 (9th Cir. Feb. 11, 2010) (dismissing action for failure to exhaust where plaintiff failed to administratively appeal the denial of his FOIA request); *Am. Small Bus. League v. U.S. Dep't of Homeland Sec.*, No. C 10-4138 SBA, 2011 WL 835925, at *3 (N.D. Cal. Mar. 4, 2011) ("courts will consider only those FOIA claims that were expressly included in the administrative appeal"). If a party fails to exhaust its administrative remedies, "the court[] will assert [its] lack of jurisdiction under the exhaustion doctrine." *In re Steele*, 799 F.2d at 466.

Here, Plaintiff has failed to exhaust his administrative remedies. His request for reconsideration is currently pending before the State Department, and he has not appealed the denial of his FOIA request under § 171.52. Accordingly, this Court lacks subject matter jurisdiction over this action. The State Department's Motion to Dismiss is GRANTED without prejudice. *See City of Oakland v. Hotels.com LP*, 572 F.3d 958, 962 (9th Cir. 2009) ("failure to exhaust administrative remedies is properly treated as a curable defect and should generally result in a dismissal without prejudice"). The State Department's ex parte application to continue the hearing date for its Motion to Dismiss is DENIED AS MOOT.

Initials of Preparer: _dr_

EXHIBIT B

Date: January 2, 2012

From: Avinash B. Kulkarni
826 Applewilde Drive
San Marcos, CA 92078
E-mail: avik_101@yahoo.com
Phone: 858.344.0237

To: Chairman, Appeals Review Panel
c/o Information and Privacy Coordinator/Appeals Officer
U.S. Department of State, SA-2
515 22nd Street, NW.
Washington, DC 20522-6001

RE: **Appeal for FOIA Request – Case # 201108461**

Dear Sir/Madam:

This communication is to appeal denial of my FOIA request (case #201108461) by the State Department, pursuant to 22 CFR § 171.52.

My request arises out of information I have received recently regarding abduction of my then six-month old child from the United States to India in 1990. My former wife was convicted of the felony crime of child abduction in California in 2009. I have since learnt that other people were involved in the abduction and fraudulent acquisition of a passport for my son in 1990. My request for information is for any records the Department may have pertaining to who paid for the child's passport in 1990 and the person/address the passport was mailed to.

I have attached my original request dated October 8, 2011 (Exhibit 1). I have also attached my supplemental input dated October 19, 2011 (Exhibit 2). This set of documents included identifying information for my son as well as me. The Department denied my request on October 25, 2011 (Exhibit 3) on three grounds – lack of third party authorization, lack of identifying information and lack of personal verification, although the first two issues were already addressed in my prior communication and phone conversations with the Department personnel. I then submitted a revised request dated October 28, 2011 (Exhibit 4). It was again denied through a Department letter dated December 19, 2011 (Exhibit 5).

I had filed a lawsuit in the United States District Court in the Central District of California (Case # SACV11-01389 JST (ANx)) requesting the court to release the said information to me. The Department is aware of this lawsuit and has been served various papers pertaining to that matter. The court agreed with the Department's position that the lawsuit was unripe and premature, and dismissed it without prejudice.

I submit that the Department's decision to deny my request is in error for various reasons explained herein. I request this panel to reconsider this decision in a fair manner and release the requested information to me, pursuant to FOIA as well as the Privacy Act.

FOIA Exemption 6

The Department's letter dated December 19, 2011 (Exhibit 5) cites *Department of State v. Washington Post Co.*, 456 U.S. 595, 601 (1982) as the basis for its decision. This case law supports my request for information. While the *Washington Post* court broadens the definition of types of government records to be considered under FOIA exemptions (Id. 598), it has not broadened the interpretation of how to apply exemptions, including Exemption 6. In *Washington Post*, the court concluded that "petitioners' denial of the request should have been sustained *upon a showing by the Government* that release of the information would constitute a clearly unwarranted invasion of personal privacy." (Id. 603). (emphasis added). In that matter, the Department had clearly identified a real possibility of danger to the lives of individuals, which formed the basis for the court's decision. Such is not the case here. Various laws, congressional reports and case law cited by the *Washington Post* court support my request for information.

Washington Post clarifies that "Congress' primary purpose in enacting Exemption 6 [of FOIA subsection b] was to protect individuals from the *injury and embarrassment* that can result from the unnecessary disclosure of personal information." (Id. 599). (emphasis added). It further cites from the House Report that "[citation] The limitation of a 'clearly unwarranted invasion of personal privacy' provides a proper balance between the protection of an individual's right to privacy and the preservation of the public's right to Government information by *excluding those kinds of files the disclosure of which might harm the individual*. [citation] H.R. Rep. No. 1497, 89th Cong., 2nd Sess., 11 (1966) (emphasis added)." In *Washington Post*, facts and circumstances led the State Department to argue that compliance with the FOIA request would "cause a real threat of physical harm". (Id. 597). That FOIA request involved two individuals who lived in a hostile country and their lives could potentially be in danger if their citizenship information was to be revealed. For my request, the Department asserts no facts. It makes an unsubstantiated blanket statement that "[t]he release of such material... would constitute a clearly unwarranted invasion of personal privacy." (Exhibit 5). The Department has not provided any rationale regarding how release of this information to me would cause *injury, embarrassment* or *harm* to my son. It is an already established fact that my son was abducted – my former wife has entered a guilty plea to that effect and has been convicted of a felony crime. During her felony conviction, the judge repeatedly remarked that she violated both my rights and the child's rights, and that the child would have been better off knowing and having a relationship with his father. While commenting on my son's state of mind, the judge repeatedly observed that "the well has been poisoned." The judge repeatedly remarked about my son's brainwashing. If anything, release of this information would set the record straight for both my son and me. It is a well-established fact that many abducted children are brainwashed and

confused. Psychological damage to the person continues well into adulthood and beyond. Release of this information would give my son an opportunity to seek and establish facts for himself. (Attached, as Exhibit 6, is the Juvenile Justice Bulletin for December 2001 published by the Department of Justice. It is only one of the numerous publications based on research funded by the DOJ. Its findings are consistent with the statements I have made.) On the other hand, withholding this information would clearly cause further damage to any chance of reunification between my son and me. The abduction has already caused severe emotional, psychological and financial harm and injury to me.

Further, the information I seek is not my son's personal information as it relates to *Washington Post*. I do not seek information regarding his citizenship, passport number, birth certificate, Social Security number, medical, employment or tax records as was the case there. Various courts have applied the "intimacy" test to release of information. By any standard, the information requested here is not at all my son's "intimate" information.

In *Washington Post*, the party seeking information, a newspaper, had not identified any immediate need for the information or violation of any person's rights that required release of information. The request was only in the broad category of "public interest". That is not the case here. In addition to the general public interest in a case of child abduction, I have clearly identified various state and federal statutes as well as clauses of the Constitution under which my most fundamental rights have been and continue to be violated. I have also explained the psychological and emotional damage inflicted upon my son and me as a result of this crime.

Washington Post cites Department of Air Force v. Rose, 425 U.S. 352, 375, n. 14 (1976) that "the primary concern of Congress in drafting Exemption 6 was to provide for the *confidentiality of personal matters*." (Id. 600) (emphasis added). For my request, abduction of a six-month old child from his custodial parent and habitual home is as much my personal matter as it is his – both of us are victims of the same crime. *Washington Post* assumes that "[s]uch files would contain at least the information that normally is required *from a passport applicant*." (Id. 601) (emphasis added). My six-month old son was not the passport applicant in 1990. His abductors applied for his passport fraudulently without his knowledge, consent or even comprehension. He had no say in the matter. They did so without my knowledge or consent, a custodial parent.

The *Washington Post* court is quite consistent with the *Rose* court. The *Washington Post* court, in the very paragraph that the Department cites to me in its letter, refers to the *Rose* court and states that "the protection of Exemption 6 is not determined merely by the nature of the file in which the requested information is contained." (Id. 601). The *Rose* court states that "... we find nothing in the wording of Exemption 6 or its legislative history to support the Agency's claim that Congress created a *blanket exemption* for personnel files. Judicial interpretation has uniformly reflected the view that *no reason would exist for nondisclosure in the absence of a showing of a clearly unwarranted invasion of privacy*, whether the documents are filed in

"personnel" or "similar" files." (Id. 372.) (emphasis added). The Department has not shown how my request constitutes invasion of privacy. It has not clarified how my request would lead to any physical, emotional, psychological or any other type of harm to my son. I submit that, in the absence of a concrete reason and basis in facts for withholding information, the Department must follow the Supreme Court's guidance. The *Rose* Court states that "these limited exemptions do not obscure the basic policy that disclosure, not secrecy, is the dominant objective of the Act." (Id. 361). I request the Department to release the requested information to me.

I do not know if my son or his representatives have explicitly asked the Department to withhold this information. However, any such request by him is not supported in law. Exemptions do not give private right of action to compel government to withhold information. Per the Supreme Court's decision in *Chrysler Corp. v. Brown*, Secretary of Defense, et al, 441 U.S. 281 (1979), "the FOIA is purely a disclosure statute and affords ... no private right of action to enjoin agency disclosure." (Id. 286). Moreover, the information I seek (i.e. who paid for the passport and where it was mailed) is not my son's personal or identifying information, nor was it generated or provided by him in 1990.

Assaults and Injustice Continue.

I would like to present facts pertaining to this abduction and why I seek the information from the Department today. Attached, as Exhibit 8, is a statement from Mr. Rajesh Nerurkar, my former wife's ex brother-in-law. My request for information was triggered by this statement which I received within the past year. It explicitly details the involvement of my former wife's coconspirators in the abduction of my child (Exhibit 8, Paragraphs 3 and 8). Mr. Nerurkar has made these statements under oath and has also testified in a court to the same. His statements are strongly *against interest* as he has essentially admitted that, in spite of prior knowledge about the abduction of my child, he and his then wife (my former sister-in-law) concealed the child and harbored the abducting parent (a fugitive) in California for about two months in 1998. He has admitted that they did not inform the authorities about the child's whereabouts, a requirement under law. The child was then re-abducted to India. Various coconspirators identified in Mr. Nerurkar's statement have categorically denied any involvement in the abduction. They have now claimed that they barely knew my former wife or me in 1990, and had very little interaction with us then – clearly a lie.

When the Office of Children's Issues managed this case between 1997 and 2008, they informed me that my former wife had complained to them about non-payment of child support. Attached, as Exhibit 9, is my e-mail communication with my former wife in 2001. I was paying her child support. As she had done in the past, she had either disconnected her phone or moved to a new address or both, without my knowledge. I simply asked her to confirm her home address so that I could send a check (Exhibit 9, Page 2). She replied with a poem she claimed to be my son's (Page 1). In that poem, Soumitra claims that his grandfather is his father. My former wife did

not give me her contact information, quite odd for a person who has cried wolf over child support. Soumitra's poem is consistent with his upbringing. During the most formative years of his life, Soumitra was told that his grandfather was his real father (Exhibit 8, Page 3, Paragraph 15). His abductors took his identity away. This is the most insidious form of child abuse. It should be noted that federal laws on the crime of child abduction (18 U.S.C. 1201 and 18 U.S.C. 1204) treat the crime as child abuse. The United States Congress has put this crime on par with capital crimes. Those abductors also took away from me what is most cherished by any person – a bond and a relationship with one's child.

When my former wife was arrested in 2008, her alleged coconspirators posted \$100,000 bail. In lawsuits in India, she had previously named these people as her coconspirators. They were aware of her prior statements and had flatly denied any involvement. They had and continue to call her a liar. Yet, they posted bail – for a person who had implicated them in a serious felony crime and a person they claim to have barely known twenty years ago. I have reason to believe that they also hired an attorney for her in 2008. They took over my former wife's criminal defense and, in turn, my entire life.

I was interested in seeking joint counseling with my son, and establishing facts from 1990 and later, so that a meaningful reunification would be possible. Attached, as Exhibit 10, is my e-mail exchange with the DA's office from September 2008 (immediately after my former wife's arrest) that discusses a possible intervention by the National Center for Missing and Exploited Children. (Please note that NCMEC staff is well-versed with counseling both victims of child abduction.) Unfortunately, that was not the interest of my son's abductors. Attached, as Exhibit 11, is my e-mail exchange with the DA's office from December 2008 in which I attempted to seek contact information for my son. Unfortunately, the DA made no attempt to contact my son directly. They simply turned around and asked my former wife's attorney for my son's contact information. This was akin to giving the key to the henhouse back to the foxes. I never got my son's phone number. Attached, as Exhibit 12, is an e-mail communication between my son and me from early 2009. I simply asked him how he was doing and if we could talk. He responded that I should talk to his mother's attorney. How could his mother's attorney represent my son's interests who has been a victim of her crime? That was the last time I heard from my son. His abductors have brazenly continued to interfere, through their hired guns, with the father-son relationship for their unlawful interests. It is critical to the abductors that a meaningful relationship not be established between my son and me. Such a relationship will shed more light on the happenings of the past twenty years and show their culpability. It will bring to light their continued violation of laws – above and beyond their actions in 1990.

My former wife asked for a preplea deal during her criminal prosecution. The matter was referred to the probation office. The probation officer did not make any attempt, on her own, to contact me or to seek my input. She never saw me or interviewed me, or asked for any facts or evidence pertaining to the abduction. (I have piles of documents that present a very consistent

story of child abduction that was planned over more than four months and executed in the most ruthless manner.) She misled me into believing that the preplea report was simply to assess my damages. I had no choice but to communicate directly with the DA's office and even the court. The court finally understood the facts and set aside the probation officer's report. (One of the alleged abductors, Mrs. Upasani, who had also posted bail, gave a statement to the probation officer claiming to be my friend, and not my former wife's. I was completely unaware of these events at the time as I was deliberately kept out of the picture. I had to fight in the court for a year just to get a redacted copy of that fraudulent probation report.) The probation officer's actions were not a happenstance. It has been important to the abductors to exclude me from any investigation. They have consistently gamed the system. Far worse, such bald-faced violations of laws and due process have led to further reinforcement of my son's brainwashing.

My former wife's coconspirators recently hired an expensive psychiatrist to conduct my "evaluation". He never attempted to contact me or interviewed me. He never interviewed a single person who has spent any meaningful time with me over the years (such as family members, friends or co-workers). He never used the terms "child abduction" or "parental alienation" in his evaluation – facts that are required to be considered by law. Yet, he has declared that I am a psychopathic, narcissistic person full of rage, and a drug addict. Once again, it was important for the abductors to exclude me from my own "evaluation".

I worked for Northrop Grumman Corporation in the defense/aerospace industry between 2003 and 2010. I have carried a Secret security clearance for this work. I was fully aware of the scrutiny involved during the vetting process and, yet, took that employment. Various government agencies involved in the vetting process must have overlooked my fictitious drug addiction that the unscrupulous character assassin spotted from miles away!

Over the years, my former wife has made wildly inconsistent accusations of abuse against me and my entire family (quite consistent with the infamous Indian Penal Code § 498A that the Department is well aware of). I have successfully taken a polygraph test and presented the results to the authorities (the few that actually have talked to me). While a score of "+6" is sufficient to establish one's truthfulness, I had a score of "+21". In sharp contrast, my former wife and her coconspirators have consistently refused to face any scrutiny and, at the same time, have successfully managed to exclude me from various court proceedings and investigation (in India as well as the United States). She has not faced cross-examination even once over the years. Her coconspirators have lied about their involvement.

Accusations of abuse are not a defense to the crime of child abduction (per state and federal laws) and are irrelevant to any legal proceeding or my current request for information. (Please note that Cal. Penal Code § 278.7(b) and 18 USC § 1204(c)(2) allow such defense only for a custodial parent but not for her coconspirators. My former wife willfully eschewed such defense and copped a deal instead. She was not interested in the scrutiny that would have followed.)

Similarly, unsubstantiated and outrageous findings of “narcissism” or any other mental disorder are quite irrelevant to the crime of child abduction. By extension, any discussion of polygraph tests and security clearances should be highly irrelevant as well. After all, the Fourteenth Amendment does not require a polygraph test or a security clearance before one can have a child. It is unfortunate that I have had to spend years not only dealing with the loss of my only child, but also defending against highly irrelevant and non-existent ghosts. My experience is consistent with that of many other victims of this crime, per the DOJ research.

I bring up this discussion for three reasons. First, this misinformation perpetuated to exploit the ignorance and stereotypes, and to defend the indefensible, has had devastating effects on my son and me. After twenty years of assaults, the emotional and psychological damage to both of us is very deep and, in many ways, irreparable. If it goes unchallenged, it will have serious long-term repercussions for my son. Second, my lone voice has been too feeble to reach out to my son amid the unrelenting assaults by his abductors and their hired guns. Today, they have complete control over his mind. In spite of its irrelevance to the crime of child abduction, I have faced the mudslinging head on. I have taken a polygraph test because my interests are far higher than meeting legal requirements. I want to establish the truth for my son. But I cannot fight this battle on my own. I need help from government agencies including the State Department. Third, while the United States Government has found me to be of high enough moral character to carry a security clearance and manage highly sensitive technologies for national defense, various government agencies have ignored me when I beg for a thorough investigation of and justice for violation of my most fundamental human rights. That attitude foments further transgressions by the perpetrators as they know quite well that they will not be challenged or stopped. So the injustice, assaults and suffering continue.

During the federal matter referenced earlier in this document, the Department’s counsel, Assistant U.S. Attorney Mr. David Pinchas, informed me that he had discussed my request with the alleged perpetrators’ attorney, Ms. Lisa Neal. He indicated that he contacted my son through Ms. Neal. I reasonably suspect that the abductors are once again manipulating the system by using my son to block potential evidence of their crimes coming to light. DOJ research on the subject of child abduction recognizes that, after years of brainwashing and programming, an abducted child relates to his or her abductors, sympathizes with them and blames the left behind parent. My son has no privacy interest in the identity of his abductors nor will he be harmed in any manner if that identity is disclosed. It is very revealing that people with very questionable past and motives have free access to and control over my son. Worse yet, if my suspicions are true, it is a travesty that such flagrant interference is being entertained. I submit that such interference is unlawful as it is meant to conceal potential evidence of an ongoing crime.

Impact of abduction on both victims has been codified by various federal, state and international laws. They uniformly treat abduction as abuse. The loss suffered by my son and me is irreversible. I can only hope to minimize the continuing damage. His brainwashing and

alienation from me started at a tender age of six months. As a result, while I cannot speak for my son today, he cannot reasonably speak for himself either. I can say only one thing with certainty – any healing or reunification can honestly start only after facts regarding the abduction are established, along with motives of people who did it.

Legal, social and psychological issues involved in child abduction are highly complex. Lot of ignorance and misconceptions exist even today – even among law enforcement and psychology professionals. Our society has made progress in understanding and addressing this issue, thanks, in no small part, to the efforts by the State and Justice Departments. Having been a victim for over twenty years, I have watched it quite closely. It is regrettable that the Department's current decision is at odds with every finding made and every law enacted, quite painstakingly, over the past thirty years. The decision is against the public policy of the United States Government regarding assisting victims of child abduction. It reverses the progress made.

Over the years, I have written letters, made phone calls and left messages for government officials, waiting for a response and justice. It never came. The OCI was one of the few bright spots in that darkness. It recognizes that my experience is all too common and fights to change it. I will never forget the help Ms. Bonita Harris provided when I was trying to get my son's Social Security number issued in 2007 so he could apply to colleges in the U.S. It is shocking to hear the same State Department call my request "a clearly unwarranted invasion of personal privacy".

Privacy Act Exceptions

In the denial letter dated October 25, 2011 (Exhibit 3, Page 2), while discussing third party authorization, the Department stated that "[r]equests can be processed without consent, but release of records may be severely limited to protect the privacy of the subject individuals." In its denial later dated December 19, 2011 (Exhibit 5), the Department has not identified what privacy is being protected.

In his e-mail dated November 14, 2011 (Exhibit 7), the Department's attorney, Mr. Jason Mehta, stated that "we will process your request to the maximum extent we can, but we may be required to withhold any personally identifiable information as appropriate under the Privacy Act."

Per 5 FAM 463, Personally Identifiable Information (PII) is defined as "[i]nformation which can be used to *distinguish or trace an individual's identity*, such as their name, Social Security number, biometric records, etc., alone, or when combined with other personal or identifying information which is linked or linkable to a specific individual, such as date and place of birth, mother's maiden name, etc." (emphasis added). Information I seek does not fall under PII for my son. I have repeatedly stated that I do not seek any *identifying information* as defined in 5 FAM 463. In fact, I am already in possession of most of the information from 1990 that can be called my son's personal or identifying information (birth certificate, medical records, etc.) I do

not seek the number for the passport that was obtained fraudulently or a copy of that passport. As I have explained earlier, I worked with the OCI and helped my son in getting his Social Security number in 2007, but did not attempt to get that number from him or anyone else. I still do not seek that information. In my revised request dated October 28, 2011 (Exhibit 4, Page 2), I stated that “[i]f you believe that you could release some of the information, but not all, I would very much like to discuss that possibility.” The Department’s blanket denial of my request is inconsistent with the definition of PII, with the Department’s prior communication (Exhibits 3 and 7) as well as with my revised request from October 28, 2011.

Privacy Act subsection (b) identifies exceptions to third party authorization. They are consistent with exceptions identified in **5 FAM § 464.b(8)** as well as in **7 FAM 063 – 068**.

Routine Use Exception

5 USC § 552a(b)(3) as well as **5 FAM § 464.b(8)(c)** and **7 FAM 064** identify the “routine use” exception. **STATE-05** identifies two categories that are applicable to me – “(m) Are involved in an international child custody dispute, possible child abuse case, or child support enforcement proceeding” and “(r) Have sought or received benefits by virtue of having been have hostage overseas or by virtue of their relationship with an individual held hostage overseas”. It specifically identifies “Parents involved in Hague International Child Abduction cases” as routine users.

My child was abducted from the United States to India. He is a U.S. citizen by birth. I was a legal resident (or U.S. national) at the time and have become a U.S. citizen since then. My former wife and I have been involved in custody dispute (civil) as well as child abduction dispute (criminal). I argued with Indian court regarding Hague Convention, the child’s U.S. citizenship, California jurisdiction, California civil and penal code, etc., but to no avail. Refusal of Indian authorities to recognize and accede to international laws does not result in forfeiture of my rights under those laws. Child abduction, by law, is child abuse. It also is a continuous crime. My child was abducted, detained, concealed and held hostage outside the U.S. between 1990 and 2008 (as confirmed by my former wife’s guilty plea). I have sought and received OCI services including welfare checks for my son in India. Criminal aspects of child abduction remain relevant and prosecutable even after the child turns 18. Psychological and emotional aspects, including brainwashing of the child, remain relevant for the remainder of the victims’ lives. These facts, individually and together, meet multiple requirements of the Routine Use Exception.

Health and Safety Exception

5 FAM § 464.b(8)(h) identifies “compelling cases of health and safety” as one of the exceptions. It is applicable to me. This exception is consistent with **5 USC § 552a(b)(8)**. It applies to health of the individual under discussion (i.e. my son) as well as to other individuals (i.e. me), per 7

FAM 066, subsections c and f. It should be noted that 7 FAM 066 subsection c (and, by inference, subsection f) includes “physical or *mental well-being*”. (emphasis added).

I have explained the damage done to my son’s psyche. It has been witnessed and officially noted by the court that prosecuted my former wife in 2009. DOJ research and many other experts on the subject of child abduction have repeatedly documented the severe negative impact of child abduction on the child for the rest of his life.

I have explained the psychological and emotional damage caused to me by this abduction. DOJ research discusses the trauma caused by child abduction on the left behind parent. It discusses the sense of grief, loss, helplessness, anxiety, anger, loneliness and other results of Post-Traumatic Stress Disorder (PTSD). In fact, a person would have to be clinically insane not to suffer from the loss of their only child. I have and continue to suffer from various conditions mentioned above. It has taken a huge toll on my personal as well as professional life. The very fact that I have spent nights, weekends and holidays for years writing communications such as this one to law enforcement officials, the State Department, U.S. senators and the Indian Prime Minister shows how consumed my life has been with the sole goal of reunification with my son. I have spent a majority of my adult life dealing with this issue. (I was twenty-five in 1990.) I do not remember what normal life is anymore. Living this life for twenty-one years has taken a tremendous toll. It is my right to seek a remedy.

I request this panel to release the requested information under Privacy Act exceptions in the interest of my son’s and my mental health as well as justice.

22 CFR § 171.12(a)

I submit that the federal regulation 22 CFR § 171.12(a) (cited in the Department letter, Exhibit 5) is not applicable as I do not seek my son’s or any other person’s records. I simply seek evidence of a crime that is still being committed against me that may be in the Department’s possession. I would also like to reiterate that the information is not my son’s identifying information. He did not create or submit this information to the Department in 1990. Who paid for the passport of a six-month old child for the purpose of abducting that child and where that passport was mailed, are not mere records of that child, even if the child is a grown man now. Perpetuation of a crime does not make it a non-crime.

I also submit that the case law *Strunk v. U.S. Dept. of State*, 693 F. Supp. 2d 112 – Dist. Court, Dist. of Columbia 2010 does not apply. In *Strunk*, the requesting party had asked for PII for then President-elect Obama. This information included entire applications for passport, entry and exit records, foreign travel, birth certificates, birth registry and adoption records (Id. 113, 114). I seek no such information for my son. In *Strunk*, the requesting party did not identify any exceptions to the Privacy Act as I have. In *Strunk*, the requesting party did not offer any evidence of wrongdoing other than postulating wild theories. In contrast, I have provided

concrete evidence, law, case law as well as a felony conviction as the basis for my request. In *Strunk*, the requesting party did not establish any personal suffering that justifies Privacy Act exceptions. I have established my ongoing victimization and suffering as a result of the abduction of my child. In *Strunk*, the requesting party did not establish what public interest would be served that could not be served through other means and remedies (a basis for a FOIA request). In contrast, I have established that various law enforcement agencies have repeatedly failed to seek justice for me and, by extension, justice for the social problem of child abduction. My only recourse at this time is to seek this information through your office.

Other Applicable Law

The Fourteenth Amendment to the United States Constitution grants me the fundamental right to have and raise a child. That right has been violated permanently and irreparably.

California's Constitution, Article 1, Section 28(a)(4), states as below (emphasis added).

"The rights of victims also include broader shared collective rights that are held in common with all of the People of the State of California and that are enforceable through the enactment of laws and through good-faith efforts and actions of California's elected, appointed, and publicly employed officials. These rights encompass the expectation shared with all of the people of California that persons who commit felonious acts causing injury to innocent victims will be appropriately and thoroughly investigated, appropriately detained in custody, brought before the courts of California even if arrested outside the State, tried by the courts in a timely manner, sentenced, and sufficiently punished so that the public safety is protected and encouraged as a goal of highest importance."

The discovery I pursue through this request is for potentially direct evidence of a felony crime committed against me. Per both state and federal law, this crime is continuous in nature. It is my constitutional right to know the identity of the perpetrators and to seek justice through the legal system. Such justice, however delayed, is also in public interest as hundreds of children are abducted outside the United States every year with no effective legal recourse.

Child abduction is a felony crime per **18 U.S.C. 1201** as well as **18 U.S.C. 1204**. Per **18 U.S.C. 3283** and **18 U.S.C. 3299**, the statutory limit for inquiry and prosecution has not expired.

Child abduction is a felony crime per **California Penal Code Section 278**. The statute calls the crime continuous. My former wife was convicted pursuant to this statute in 2009.

The Hague Convention on Civil Aspects of International Child Abduction (1980) is the international law that recognizes child abduction as unlawful and grants specific remedies for the left behind parent. Since India is not a signatory to this convention, I could not enforce my rights

there. However, the United States is a signatory. It is binding on all government agencies of the United States to comply with this law. Particularly, the Office of Children's Issues within the State Department is the Central Authority for the Hague Convention for the United States. It is binding on the Department to comply and cooperate with both the text and the spirit of this law. That means assisting a victim of this crime in reunification with his lost child. Concealing identity of perpetrators would act against the spirit of the law.

I have presented evidence that raises serious concerns about legality of passport acquisition in 1990. I have also discussed how the perpetrators are continuing with their assaults even today and attempting to conceal evidence of their crimes from coming to light. My case is a textbook example of long-term international child abduction. I request the Department to ask appropriate government agencies to conduct a criminal investigation of events in 1990 as well as over the past four years.

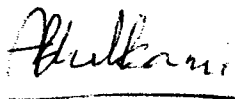
Summary

Requested information is not my son's Personally Identifiable Information (PII). It pertains as much to me as it does to him since both of us have been victims of this crime. FOIA Exemption 6 is not a blanket exemption that can be applied without any showing of clearly unwarranted invasion of personal privacy that will result in real injury or harm. FOIA affords no private right of action to enjoin agency disclosure, and disclosure cannot be withheld on private requests. Supreme Court orders and opinions, including the one cited by the Department, support my request for information. I have demonstrated my compelling interest in this matter, including mental well-being of my son and me. That makes my request valid under the Privacy Act without my son's authorization. I have a constitutional right to the information and subsequent justice I seek. Such justice will be in public interest as well.

I therefore request this panel to reconsider my request and release the information I seek. I further request this panel to grant me a telephonic hearing prior to its ruling, if further clarifications are necessary. I welcome my son's attendance and input at such a hearing.

I declare, certify, verify or state that, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct.

Respectfully submitted,



Avinash B. Kulkarni

EXHIBIT 1

Date: October 8, 2011

From: Avinash B. Kulkarni
826 Applewilde Drive
San Marcos, CA 92078
E-mail: avik_101@yahoo.com
Phone: 858.344.0237

To: Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, DC 20522-8100

RE: **FOIA Request for Release of Information with Evidence of Child Abduction**

Dear FOIA Officer:

This is a request filed under the Freedom of Information Act.

Date range of request: March 1990 through October 15, 1990

Description of request:

Please search the records for passport applications for the following information for my son, Soumitra Avinash Kulkarni, pertaining to application of his passport in 1990 that was used for his abduction outside the United States. My request is for information regarding who paid for the said passport and where the passport was mailed.

- (a) Date on which the application for passport was filed in 1990
- (b) Place where the application was filed
- (c) Name(s) of person(s) filing the application
- (d) Address that was provided as Soumitra Kulkarni's home address
- (e) Name of the person who paid the passport application fee
- (f) Mode of payment for the application fee (e.g. personal check, cashier's check, etc.)
- (g) Date on which the said passport was issued
- (h) Name of the person to whom the passport was mailed
- (i) Address to which the passport was mailed

I am interested in getting two (2) certified copies of this information. I am willing to pay up to \$300 for the processing of this request. Please inform me if the estimated fees will exceed this limit before processing my request.

I am seeking information for personal use and not for commercial use.

Rationale for request:

I lived in Orange County, California in 1990 with my wife, Neelam Kulkarni (a.k.a. Neelam Thakur), at 21141 Canada Road #13D, El Toro, CA 92630. Our son, SOUMITRA AVINASH KULKARNI, was born on March [REDACTED]. Soumitra is a United States citizen. Neelam applied for Soumitra's United States passport in or about August or September 1990, unbeknownst to me. On October 15, 1990, using that passport, Neelam abducted six-month old Soumitra, my only child, to India without my knowledge or consent. I never saw my child again.

Neelam came to the United States in 2008 and was arrested at the Los Angeles Airport. She was prosecuted by the Orange County District Attorney for child abduction. Neelam pled guilty to the felony crime of child abduction on July 24, 2009 under Cal. Penal Code § 278.5(a). She pled that "... on and between October 15, 1990 & March 25, 2008, [she] unlawfully took, kept, withheld Soumitra K., a child, maliciously & unlawfully depriving Avinash Kulkarni, a lawful custodian, of his right to custody." I continue to seek reunification with my son, but without success. The young man's brainwashing and alienation are complete and irreversible. As the judge remarked during Neelam's felony conviction, "the well has been poisoned". I have recently learned that Neelam's friends aided and abetted in the abduction in 1990, including acquisition of the infant's passport. I seek to establish the truth. I understand that the State Department maintains records for passport applications.

Information I seek is either no person's personal information or my own personal information. I do not seek any person's personal information such as social security number, employment records, medical records, tax returns, etc. Release of the requested information will not compromise any person's right to privacy. Some of the requested information, such as address specified as the infant child's home address, is my own personal information. The child lived with me, a custodial parent, every day from his birth until his abduction on October 15, 1990. On the other hand, if a different home address was specified for the child in the passport application, it would amount to passport fraud committed with intent to keep me in the dark and to abduct my child without my knowledge. Similarly, Neelam and I were married and lived together in 1990 until the day of abduction. My employment was our only source of income. Neelam did not have any independent assets. All our financial transactions were conducted through a single bank account we owned jointly. Any transaction conducted by Neelam through that account is my personal information. On the other hand, if a third person was involved in the transaction, it is not any person's personal information, particularly because the transaction was conducted in furtherance of conspiracy to abduct the child to whom such a person had no custodial right.

I believe that, had the federal regulation (22 C.F.R. § 51.28) requiring consent of both parents for issuing a minor child's passport been in place in 1990, my infant son's passport would not have been issued in the first place without my knowledge or consent. The very fact that the United

States Congress recognized the loophole in the law misused by many abducting parents like Neelam, and enacted 22 C.F.R. § 51.28 in 2001, strengthens my right to information I seek.

I therefore submit that the information sought is either no person's personal information or my own personal information, and that various exemptions to the FOIA identified under 5 U.S.C. §§ 552(b)(1)-(9) do not apply to the requested information. I request that the information be released to me under the FOIA, 5 U.S.C. § 552.

My interest in this information is compelling. Soumitra was an infant at the time of his abduction. My wife, Soumitra and I lived together as family. I was a loving and caring father and husband, and the sole provider to the family. I had full custody rights to Soumitra per California laws. I did not lose custodial rights at any time subsequent to the illegal abduction of my child, per state and federal laws as well as per Neelam's guilty plea and felony conviction in 2009. I had a right to full access to the requested information in 1990 and I still am entitled to that information.

I have suffered immensely due to the abduction of my only child for the past twenty years, and will continue to suffer for the rest of my life. Knowledge of this information will greatly assist me in my ongoing quest for justice and reunification with my son. Research by the Justice and State Departments has established that any meaningful reunification is exceedingly difficult in long-term child abduction. I submit that even that remote possibility will become impossible if facts are not established. This information will establish if other people were involved in the abduction of my child. Establishing the truth certainly cannot be detrimental to any person's interests or rights.

I still have a right to information from 1990, particularly as it pertains to violation of my most fundamental right to have and raise a child as guaranteed under the Fourteenth Amendment to the United States Constitution. My interest in and right to this information is undeniably strong and compelling.

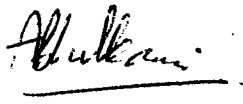
My request is consistent with the State Department policy. 22 C.F.R. § 172.1(e) states that "[n]othing in this part affects disclosure of information under the Freedom of Information Act (FOIA), 5 U.S.C. 552, the Privacy Act, 5 U.S.C. 552a..." My request falls in this category. Further, 22 C.F.R. § 172.8(a) identifies the considerations in determining whether the USDOS will comply with a request. Per these criteria, my request is as deserving as any. Per the annual report submitted by the USDOS to the United States Congress on international child abduction, approximately 1,600 children are abducted outside the United States every year. That number has been trending upward, in spite of tightening of passport laws. Most of those cases are never brought to a court due to lack of reciprocity from foreign jurisdictions. Tens of thousands of victims (both abducted children and left-behind parents) suffer silently for the rest of their lives. Further, the United States Government spends significant resources in investigating and

managing these cases, providing support to victims, and conducting research to understand and fight the widespread problem. The problem of international child abduction is of public interest.

My primary objective is reunification with my son. Establishing facts regarding the abduction will be the first step in that process. Fulfilling my request will contribute to the USDOS' goal of fighting the scourge of child abduction. Also, my request is quite ordinary and time required to fulfill it will be minimal. I further submit that none of the prohibiting factors identified in 22 C.F.R. § 172.8(b) apply to my request.

Thank you for your consideration,

Sincerely,

A handwritten signature in black ink, appearing to read "Avinash B. Kulkarni", is written above a horizontal line.

Avinash B. Kulkarni

EXHIBIT 2

Date: October 19, 2011

From: Avinash B. Kulkarni
826 Applewilde Drive
San Marcos, CA 92078
E-mail: avik_101@yahoo.com
Phone: 858.344.0237

To: Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, DC 20522-8100

RE: **Case # 201108461 – Supplemental Information**

Dear FOIA Officer:

This communication is to provide additional specifics and documentary evidence for my FOIA request (dated October 8, 2011) for information regarding abduction of my son in 1990.

Attachment 1 is a copy of my current United States passport. It verifies my identity and signature.

Attachment 2 is a copy of the guilty plea my former wife, Neelam, entered in the Superior Court of California in Orange County on July 24, 2009. Paragraph 21 on page 3 of this document confirms that I was the father and custodial parent of Soumitra, and that Neelam abducted the child.

Attachment 3 is a copy of a check Neelam wrote on June 19, 1990 from our joint bank account to get a duplicate birth certificate for the child without my knowledge. This check confirms our home address in 1990 as "21141 Canada Road #13D, El Toro, CA 92630" – as I have stated in my original communication on October 8th. (Neelam has since admitted that she used this birth certificate to get the child's passport in 1990.)

Soumitra was born at the [REDACTED] on March [REDACTED], 1990. Attachment 4 is a copy of his birth certificate that was issued to me in 2007. It establishes his date and place of birth. It also establishes that I am Soumitra's father.

Soumitra approached me in 2007 seeking help to obtain his social security number. I acquired and sent him certified copies of his birth certificate. I worked with various government agencies and officials – including Ms. Bonita Harris at the Office of the Children's Issues, the U.S. Consulate in Mumbai, the Social Security Administration (SSA) office in Baltimore as well as

SSA in Manila, Philippines – to get Soumitra's SSN issued in a timely manner. Once Soumitra received his SSN from the U.S. Consulate in Mumbai, I did not try to get it from him or from any other source. Similarly, I authorized renewal of Soumitra's passport in 2006 without seeking to know the passport number. I am sure that the State Department has records of my communication (including numerous e-mails) from those two events.

I have tried to work on establishing a relationship with my son for the past twenty years. I have never believed that acquiring his personal information (such as current passport number or social security number) would, in any manner, help me. As demonstrated during the above-mentioned events, I have always honored Soumitra's space and not sought any of that information even when I had an opportunity to get it.

However, as I have stated in my original communication, the information I seek here is not Soumitra's personal information. I have as much right to that information as any person. Most importantly, it will greatly help me in establishing facts regarding abduction, pursuing reunification with my son and seeking justice for the ongoing crime committed against me.

I have suffered the pain of losing my only child for the past twenty years. **I will greatly appreciate if your office treats my request with a higher priority and provides this information at its earliest convenience.**

Thank you for your consideration,

Sincerely,



Avinash B. Kulkarni

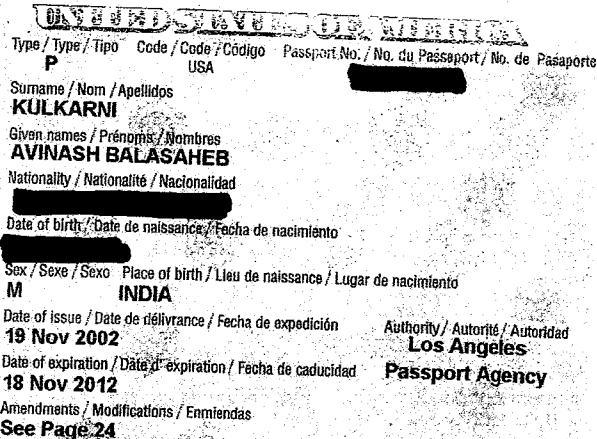
ATTACHMENT 1

Le Secrétaire d'Etat des Etats-Unis d'Amérique
prie par les présentes toutes autorités compétentes de laisser passer le citoyen
ou ressortissant des Etats-Unis titulaire du présent passeport, sans délai ni
difficulté et, en cas de besoin, de lui accorder toute aide et protection légitimes.

El Secretario de Estado de los Estados Unidos de América por el presente solicita a las autoridades competentes permitir el paso del ciudadano o nacional de los Estados Unidos aquí nombrado, sin demora ni dificultades, y en caso de necesidad, prestarle toda la ayuda y protección lícitas.

SIGNATURE OF BEARER/SIGNATURE DU TITULAIRE/FIRMA DEL TITULAR

NOT VALID UNTIL SIGNED



P<USAKULKARNI<<AVINASH<BALASAHEB<<<<<<<<<<<<<<<
[REDACTED] <<<<<<<<<<<<<<<02

ATTACHMENT 2

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
ADVISEMENT AND WAIVER OF RIGHTS FOR A FELONY GUILTY PLEA**

Case No. 08CF1764 People v. Neelam Ramakant Thakur

1. 20 My true full name is Neelam Ramakant Thakur

I am represented by _____

2. 20 I understand that I am pleading guilty, and admitting the following offenses, special punishment allegations, and prior convictions, carrying the possible penalties as follows:

Ct.	Charge	Sentence Range	Enhancements	Yrs.	Term for Priors	Yrs.	Total Penalty Years
1	278.5(a)PC	16-2-3					3
Maximum Total Punishment							3

3. 20 In addition to time in custody, I understand the court may also order me to pay a fine as follows: up to \$10,000 for most felonies [P.C. 672]; up to \$20,000 for selected drug offenses [H&S 11372]; up to \$50,000 for selected drug offenses [H&S 11352.5]; or other:
4. 20 I understand it is absolutely necessary that all plea agreements, promises of a particular sentence, and sentence recommendations be completely disclosed to the court on this form.
5. 20 **Right to an attorney:** I understand I have the right to be represented by an attorney at all stages of the proceedings until my case is completed. If I cannot afford an attorney, one will be appointed for me free of charge. However, I understand that at the conclusion of my case, the court may order me to reimburse the County of Orange for the cost of my attorney, according to my ability to pay.
6. 20 **Right to a preliminary hearing:** I understand I have the right to a preliminary hearing at which a judicial officer will determine if there is sufficient evidence to justify setting my case for trial. At this hearing, I have the right to be represented by an attorney as described in paragraph 5 above, the right to confront and cross-examine witnesses against me, the right to present evidence on my behalf, and the right to remain silent and not testify; but I may testify if I want to. I waive and give up my right to a preliminary hearing.
7. 20 **Jury trial rights:** I understand I have the right to a speedy and public trial by a jury. I waive and give up these rights.
8. 20 **Rights to confront and cross-examine witnesses:** I understand I have the right to confront the witnesses against me and to cross-examine them myself or have my attorney cross-examine them. I waive and give up these rights.
9. 20 **Right to testify or remain silent:** I understand I have the right to testify on my behalf. I also understand I have the right to remain silent, and I cannot be compelled to testify against my will. I waive and give up these rights.
10. 20 **Right to present evidence:** I understand I have the right to present evidence and to call witnesses to testify on my behalf. I further understand I have the right to invoke the compulsory process of the court to subpoena evidence and witnesses at no cost to me. I waive and give up these rights.
11. 20 **Immigration consequences:** I understand if I am not a citizen of the United States, my conviction for the offense charged will have the consequence of deportation, exclusion from admission to the United States, or denial of naturalization pursuant to the laws of the United States.

Case No. 08CF1764 People v. Thakur

12. 12 **Fourth Amendment waiver:** I understand under the Fourth and Fourteenth Amendments to the United States Constitution, I have a right to be free from unreasonable searches and seizures. I waive and give up this right, and further agree that for the period during which I am on probation I will submit my person and property, including any residence, premises, container or vehicle under my control to search and seizure at any time of the day or night by any law enforcement officer or probation officer, with or without a warrant, probable cause, or reasonable suspicion.
13. 13 **Sentencing waiver:** I understand I have the right to a jury or court trial as to certain factors that may be used to increase my sentence on any count, sentencing enhancement, or allegation, to the upper or maximum term provided by law. I waive and give up the right to a jury or court trial on all of these factors. I agree the judge will determine the existence of any of these factors, within the judge's discretion, as allowed by law. I agree this waiver shall apply to any future sentence imposed following a probation revocation.
14. 14 **Appeal waiver:** I understand I have the right to appeal from decisions and orders of the Superior Court. I waive and give up my right to appeal from any and all decisions and orders made in my case, including motions to suppress evidence brought pursuant to Penal Code section 1538.5. I waive and give up my right to appeal from my guilty plea. I waive and give up my right to appeal from any legally authorized sentence the court imposes which is within the terms and limits of this plea agreement.
15. 15 **Parole after prison:** I understand if I am sentenced to state prison, upon my release I will be on parole for a period of time ranging from 3 years to life. I further understand I could be sent back to state prison for a period of up to one year for each violation of any term or condition of my parole.
16. 16 **Mandatory state prison:** I understand I am not eligible for probation, and I will be sentenced to state prison in this case.
17. 17 **Proposed disposition:** I understand the court will: (Circle and initial all that apply)
- X (a) Sentence me to state prison for a period of _____ years and _____ months, credit for time served of _____ days actual custody and _____ days of good time/work time for a total credit of _____ days. I waive and give up my right to make application for probation and request immediate sentence.
- X (b) Consider my application for probation before pronouncing sentence. I understand the court may deny my application for probation and sentence me to state prison for a maximum period of _____ years and _____ months.
- 1 (c) Grant me probation under the terms and conditions set forth on the attached page 5 that I have initialed and signed. I understand I have the right to reject probation and have the court impose a final sentence. However, I agree to accept probation on the terms and conditions set forth on the attached page 5. I further understand that if I am found in violation of any of the terms or conditions of probation, the court may sentence me to state prison on this case for a maximum period of 3 years and 0 months.
- X (d) Order me to pay restitution on counts _____, even if any of these counts have been dismissed as part of the plea agreement, in the amount of _____, or in an amount to be determined by the Probation Department. If I disagree with the amount of restitution determined by the Probation Department, I may request a court hearing to determine the amount of restitution.
- 1 (e) Order me to pay the mandatory state restitution fine between \$200 and \$10,000 [P.C. 1202.4]. A second restitution fine in the same amount will also be ordered if I receive a sentence that includes probation, a conditional sentence, or parole. This second fine will be suspended and I will only have to pay it if the court later finds that I have violated the terms of my probation, conditional sentence, or parole [P.C. 1202.44 & 1202.45]. A twenty dollar court security fee must also be paid [P.C. 1465.8] as well as a thirty dollar court facility fee [G.C. 70373] on each count convicted.
- 1 (f) Order me to provide samples of my saliva, blood, and prints pursuant to P.C. 296 and P.C. 296.1.
- 1 (g) Order me to provide a DNA buccal sample, fingerprints and photograph to OCDA for analysis and retention in any law enforcement DNA database for law enforcement purposes.

Case No. 08 CF 1764 People v. Thakur☒ (h) Order me to register pursuant to the following: (Circle and initial all that apply)

(1) _____ H&S 11590 – (narcotics offense)

(2) _____ P.C. 186.30 – (gang-related offense)

(3) _____ P.C. 457.1 – (arson-related offense) I understand I will have to register for the rest of my life.

(4) _____ P.C. 290 – (sex offense) I understand I will have to register for the rest of my life if I work,
attend school, or reside in California.☒ (i) Order that my driver's license or driving privilege be suspended or revoked for a period of _____☒ (j) The court will order that all monies paid will first be applied to restitution; and that the following terms are also part of this plea:NONE18. ☒ I acknowledge all other cases pending against me in Orange County and the proposed disposition:NONE19. ☒ I understand a plea of guilty in this case may constitute an admission I violated a previous grant of probation or parole in other cases and may result in additional penalties being imposed in those cases.20. ☒ I offer my plea of guilty freely and voluntarily, and with full understanding of all matters set forth in the accusatory pleading and this advisement and waiver of rights form. No one has made any threats or used any force against me, my family, or anyone else I know, in order to convince me to plead guilty in this case. Further, all promises that have been made to me to convince me to plead guilty are on this advisement and waiver of rights form.21. ☒ I offer the following facts as the basis for my guilty plea:

In Orange County, California, on + between October 15, 1990 + March 25, 2008, I unlawfully took, kept, withheld Saumitra K., a child, maliciously + unlawfully depriving Avinash Kulkarni, a lawful custodian, of his right to custody.

Case No. 08CF1764 People v. Thakur

22. I understand each and every one of the rights set forth above in this advisement and waiver of rights form. I waive and give up each of those rights in order to enter my guilty plea. I am entering a guilty plea because I am in fact guilty and for no other reason. I declare under penalty of perjury I have read, understood, and personally initialed each numbered item above, and I have discussed them with my attorney. I declare under penalty of perjury everything on this form is true and correct. I understand the signing and filing of this form is conclusive evidence I have pled guilty to the charges listed on this advisement and waiver of rights form.

Executed in Orange County, California.

Dated: 29 July 2008 Signed: [Signature]
Defendant

23. **DEFENSE ATTORNEY'S STATEMENT:** I am the attorney of record for defendant. I have explained to defendant each of the rights set forth on this form. I have discussed the charges and the facts with defendant. I have studied the possible defenses to the charges and discussed those possible defenses with defendant. I have discussed the possible sentence ranges and immigration consequences with defendant. I also have discussed the contents of this form with defendant. I concur with defendant's decision to waive the rights set forth on this form and to plead guilty. No promises of a particular sentence or sentence recommendation have been made to defendant by me, or to my knowledge by the prosecuting attorney or the court, which have not been fully disclosed on this form. I agree that this form may be received by the court as evidence of defendant's advisement and voluntary, intelligent, knowing, and express waiver of the rights set forth on this form.

Dated: 7/24/09 Signed: [Signature]
Attorney24. **INTERPRETER'S STATEMENT:**

I, _____, having been duly sworn as a court certified interpreter, state that I am fluent in the _____ language. I translated the contents of this form to defendant in that language. The defendant told me he/she understood the contents of this form and initialed and signed it in my presence.

Dated: _____ Signed: _____
Interpreter25. **FOR THE PEOPLE:**Dated: _____ Signed: _____
Deputy District AttorneyPlea to the Court ✓

(appearing: James F. Bacin)

**SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
TERMS AND CONDITIONS OF FELONY PROBATION**

Case No. 08CF1764People v. Neelam Ramakant Thakur

1. X Sentenced to State Prison for _____ years and _____ months. Execution of sentence suspended. Placed on probation for _____ years.
2. NE Imposition of sentence suspended. Placed on probation for 2 years.
3. X ~~Supervised Probation OR~~ Probation Department relieved of supervision. (Initial one) = 15
4. NE Serve 180 days in County Jail. Credit for 11 days actual time served and 4 days good time/work time. Stay granted until _____ *
5. X Pay fine of _____ plus penalty assessment.
6. NE Pay mandatory fee of \$50.00 for each count convicted. [Court Safety- \$20.00- P.C. 1465.8 and Facilities-\$30.00-G.C. 70373].
7. X Pay mandatory laboratory analysis fee of \$50 for each specified drug offense plus penalty assessment [H&S 11372.5 & P.C. 1464].
8. NE Pay mandatory state restitution fine of \$1,000 [Min: \$200; Max: \$10,000 P.C. 1202.4]. If your sentence includes probation, a conditional sentence, or parole, the court will order you to pay a second restitution fine in the same amount, but it will be suspended and you will only have to pay the second fine if you are later found in violation of your probation, conditional sentence, or parole [P.C. 1202.44 & 45]. All monies paid by defendant for any purpose will first be applied to restitution until it is paid in full. [Cal. Const.]
9. NE Pay restitution on counts _____ even if any of these counts have been dismissed as part of a plea agreement, in the amount of _____ or in an amount to be determined by the Court and as directed by the Probation Department. You are also ordered to make all financial disclosures required by law in order to fulfill your responsibility to pay full restitution [P.C. 1202.4].
10. X Register pursuant to: (Initial all those that apply)

(a) _____ H&S 11590 [narcotics offense]	(c) _____ P.C. 290 [sexual offense-lifetime registration]
(b) _____ P.C. 186.22 [gang related offense]	(d) _____ P.C. 457.1 [arson offense-lifetime registration]
11. NE Provide samples of your saliva, blood, and prints pursuant to P.C. 296 and P.C. 296.1.
12. NE Provide a DNA buccal sample, fingerprints & photograph to OCDA immediately or within 72 hours of your release if in custody.
13. X Do not be in the presence of children under the age of 18, unless accompanied by a responsible adult 21 years of age or older and approved in advance by your probation officer.
14. NE Use no unauthorized drugs, narcotics, or controlled substances, and submit to drug or narcotic testing as directed by your probation officer or any peace officer. Stricken by Court
15. NE Submit your person and property, including any residence, premises, container or vehicle under your control, to search and seizure at any time of the day or night by any law enforcement officer or probation officer, with or without a warrant, probable cause, or reasonable suspicion.
16. NE Stricken by Court.
~~Cooperate with your probation officer in any plan for psychological, psychiatric, alcohol, and/or drug treatment. Seek training, schooling, or employment, and maintain residence as approved by your probation officer. Do not associate with persons known to you to be parolees, convicted felons, users or sellers of illegal drugs, or otherwise disapproved of by probation.~~
17. X Do not possess any blank checks, write any portion of any checks, have any checking account, nor use or possess any credit cards or open credit accounts, unless approved in advance by your probation officer. Use only your true name. Do not possess any other persons' personal identifying information or personal financial information unless approved in advance by your probation officer.
18. NE Do not own, use, or possess any type of dangerous or deadly weapon, including any firearm or ammunition.
19. NE Obey all orders, rules, regulations, and directives of the Court, Probation Department, and jail.
20. NE Violate no law.
21. X Driver's license or driving privilege is suspended or revoked for a period of _____.
22. X All of the below apply unless lined out:
 - a. Do not drive a motor vehicle with a measurable amount of alcohol in your blood.
 - b. Submit to a chemical test of your blood on demand of any peace officer or probation officer.
 - c. Do not be present in any establishment where the primary items for sale are alcoholic beverages.
 - d. Do not consume any alcoholic beverages.
 - e. Do not drive a motor vehicle without a valid California Driver's License on your person.
23. X Do not, in any manner, directly or indirectly, initiate contact with, nor have any communication with: _____
24. X CVC 23593 Advisement: You are hereby advised that being under the influence of alcohol or drugs, or both, impairs your ability to safely operate a motor vehicle. Therefore, it is extremely dangerous to human life to drive while under the influence of alcohol or drugs, or both. If you continue to drive while under the influence of alcohol or drugs, or both, and, as a result of that driving, someone is killed, you can be charged with murder.
25. NE Disclose your probation status and terms upon the request of any peace officer.
26. NE Other conditions: * 90 days (of 180) may be served on electronic home confinement before jail.
27. NE Pay cost of probation, according to ability to pay, as directed by your probation officer. Stricken by Court.
28. NE I understand that the Court ultimately determines the conditions of probation, and I have the right to request the Court to modify or eliminate any condition imposed by the Probation Department that I believe is unreasonable.
I have read and agree to all the terms and conditions of probation I have initialed above.

Dated: 7/21/09Defendant's Signature: Neelam Thakur

Defendant

ATTACHMENT 3

AVINASH B KULKARNI
NEELAM A KULKARNI

714 855-4377
 21141 CANADA ROAD #13D
 EL TORO CA 92630

\$ 368

Bank of America NT & SA
 El Toro Branch 0735
 P.O. Box 129
 El Toro, CA 92630

OTHER

BAL. FOR'D	16-66/1220
AMOUNT WRITTEN	368
BALANCE	
DEPOSIT	
BAL. FOR'D	

⑆ 122000661 ⑆ 0368 ⑆ 07356 ⑆ 08038 ⑆

NOT NEGOTIABLE

ATTACHMENT 4

STATE OF CALIFORNIA
CERTIFICATION OF VITAL RECORDCOUNTY OF ORANGE
SANTA ANA, CALIFORNIA

104-

CERTIFICATE OF LIVE BIRTH
STATE OF CALIFORNIA
USE BLACK INK ONLY

LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER

STATE FILE NUMBER		LOCAL REGISTRATION DISTRICT AND CERTIFICATE NUMBER	
THIS CHILD	1A. NAME OF CHILD—FIRST (GIVEN)	1B MIDDLE	1C LAST (FAMILY)
	Soumitra	[REDACTED]	K [REDACTED]
PLACE OF BIRTH	2 SEX	3A THIS BIRTH SINGLE TWIN ETC	3B IF MULTIPLE THIS CHILD 1ST AND ETC
	Male	Single	-
FATHER OF CHILD	4A DATE OF BIRTH—MONTH DAY YEAR	4B HOUR—24 HOUR CLOCK TIME	
	March [REDACTED] 1990	1450	
MOTHER OF CHILD	5A PLACE OF BIRTH—NAME OF HOSPITAL OR FACILITY	5B STREET ADDRESS—STREET NUMBER OR LOCATION	
	[REDACTED]	[REDACTED]	
PARENT'S CERTIFICATION	5C CITY	5D COUNTY	5E PLANNED PLACE OF BIRTH
	[REDACTED]	Orange	Hospital
CERTIFICATION OF BIRTH	6A NAME OF FATHER—FIRST (GIVEN)	6B MIDDLE	6C LAST (FAMILY)
	Avinash	[REDACTED]	K [REDACTED]
LOCAL REGISTRAR	7 STATE OF BIRTH	8 DATE OF BIRTH—MONTH DAY YEAR	
	[REDACTED]	[REDACTED]	
MOTHER OF CHILD	9A NAME OF MOTHER—FIRST (GIVEN)	9B MIDDLE	9C LAST (MAIDEN)
	Neelam	[REDACTED]	[REDACTED]
PARENT'S CERTIFICATION	10 STATE OF BIRTH	11 DATE OF BIRTH—MONTH DAY YEAR	
	[REDACTED]	[REDACTED]	
CERTIFICATION OF BIRTH	12A PARENT OR OTHER INFORMANT—SIGNATURE	12B RELATIONSHIP TO CHILD	12C DATE SIGNED
	[REDACTED]	Mother	[REDACTED]
LOCAL REGISTRAR	13A ATTENDANT OR CERTIFIER—SIGNATURE—DEGREE OR TITLE	13B LICENSE NUMBER	13C DATE SIGNED
	[REDACTED]	[REDACTED]	[REDACTED]
LOCAL REGISTRAR	13D TYPED NAME, TITLE AND MAILING ADDRESS OF ATTENDANT	14 TYPED NAME AND TITLE OF CERTIFIER IF OTHER THAN ATTENDANT	
	26732 Crown Valley Pkwy #441 Mission Viejo CA 92691	[REDACTED]	
LOCAL REGISTRAR	15A. DATE OF DEATH	15B. STATE FILE NO (STATE USE ONLY)	16 LOCAL REGISTRAR SIGNATURE
			[REDACTED]
LOCAL REGISTRAR	17 DATE ACCEPTED FOR REGISTRATION		
	APR 3 1990		

111382

CERTIFIED COPY OF VITAL RECORDS

STATE OF CALIFORNIA
COUNTY OF ORANGE

} SS

DATE ISSUED JUL 20 2007

This is a true and exact reproduction of the document officially registered and placed on file in the office of the Orange County Clerk-Recorder.

This copy not valid unless prepared on engraved border displaying seal and signature of Clerk-Recorder.

Tom Daly
TOM DALY
CLERK-RECORDER
ORANGE COUNTY, CALIFORNIA

001827877



ANY ALTERATION OR ERASURE VOIDS THIS CERTIFICATE

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EXHIBIT 3



United States Department of State

Washington, D.C. 20520

OCT 25 2011

Dear Requester,

RE: Sumitra [REDACTED] [REDACTED]

This is in response to your request dated 10/8/2011. We have assigned Case Control Number 201108461 to your request.

Based on our review of your correspondence, we have determined that we cannot process your request for the following reason(s):

- ☐ You have not reasonably described the records you seek in a way that someone familiar with Department records and programs could locate them.
- ☒ You have not provided a valid third party authorization; or proof of death; or custodial verification of a minor.
- ☒ You have not provided identifying information (such as your date and/or place of birth, or the date and/or place of birth for all persons named in your request; citizenship status).
- ☒ You have not provided proof of your identity (personal verification).
- ☐ Some or all of the records you have requested do not appear to be State Department records (other agency information may be attached).
- ☐ The records you seek are in the public domain.
- ☐ Your request is not dated.
- ☐ You have submitted your identifying information on forms that were not issued by the State Department, which we do not accept.
- ☐ You have not agreed to pay the fees associated with the processing of your request.
- ☐ Your request is not a FOIA Request.
- ☐ Your request was not submitted in English.

Accordingly, your request is invalid and your case has been closed.

Should you want to contact us, you may call our FOIA Requester Service Center on (202) 261-8484 or send an email to FOIAstatus@state.gov. If you want information concerning how to file a request, please refer to the Information Access Guide which is available at www.foia.state.gov. Please refer to the Case Control Number in any communication.

Sincerely,

 Mary Therese Casto
Chief, Requester Communications Branch

Office of Information Programs and Services
U.S. Department of State, SA-2
Washington, DC 20522-8100
Website: www.foia.state.gov

Inquiries:
Phone: 1-202-261-8484
FAX: 1-202-261-8579
E-mail: FOIAStatus@state.gov

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Third Party Authorization: In general, under the provisions of the FOIA and Privacy Act, access to information about private individuals cannot be given to unauthorized third parties absent the individuals' written consent.

The State Department requires that written consent be either in the form of a signed notarized statement, or contain an under penalty of perjury statement from the individual(s), authorizing the Department of State to release information to the other party (22 C.F.R. 171.12(a)). Please note that written consent may be forwarded to us by U.S. mail or by fax.

If using a notary, the statement should bear the signature of the individual(s) and signature and seal of the notary, and be dated within six months of the date of the request.

In lieu of notarization, the individual(s) may make the following statement: "I declare, certify, verify or state that, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct." Such a statement must be forwarded to us **bearing the signature of the individual(s)**, and be dated within six months of the date of the request.

In cases involving a visa petitioner and one or more beneficiaries, please obtain an authorization from all parties.

For living individuals, please provide written consent (see above), or advise us that you are unable to provide such an authorization. Requests can be processed without consent, but release of records may be severely limited to protect the privacy of the subject individuals.

For deceased individuals, unless the death has been widely reported, please provide proof of death, e.g. newspaper obituary or a copy of a death certificate, or advise us that none will be forthcoming.

Please note, the authorization, and your request for information from the State Department, **should not be submitted on Department of Homeland Security (such as a G-28 or G-639) forms, or a form from any other agency**, but rather on your letterhead or plain bond. Please be advised that these forms do not authorize the State Department to release privacy-protected information, rather they authorize the Department of Homeland Security to release privacy-protected information.

Personal Verification: For records concerning yourself, the Department of State requires that your request be dated and signed, and that your signature either be notarized or contain an under penalty of perjury statement (22 C.F.R. 171.32(b)). Please note that your request may be forwarded to us by U.S. mail or by fax.

If using a notary, your request should bear your **signature and the signature and seal of the notary**, and be dated within six months of the date of the request.

In lieu of notarization, you may make the following statement: "I declare, certify, verify or state that, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct." Such a statement must be forwarded to us **bearing your signature**, and be dated within six months of the date of the request.

EXHIBIT 4

Date: October 28, 2011

From: Avinash B. Kulkarni
826 Applewilde Drive
San Marcos, CA 92078
E-mail: avik_101@yahoo.com
Phone: 858.344.0237

To: Office of Information Programs and Services
A/GIS/IPS/RL
U.S. Department of State
Washington, DC 20522-8100

RE: **Case # 201108461 – Response to your letter dated October 25, 2011**

Dear FOIA Officer:

This communication is in response to your letter dated October 25, 2011 denying my request for release of information pertaining to abduction of my child. I have attempted to address various issues you have raised while denying my request.

I have also enclosed my original request (dated October 8, 2011) as well as supplemental information I provided (dated October 19, 2011) for your reconsideration.

Issue # 1 – Third Party Authorization

I have had no communication with my son since early 2009. I do not even know the current address or phone number for my son. Although unfortunate, this situation is typical for a twenty-year long abduction in which parental alienation and brainwashing of the child are complete and irreversible. (That is precisely what I am fighting against and seeking remedy for.) I am unable to get my son's authorization at this time.

However, as I have pointed out in my original communication, information I seek is not his personal information (such as social security number, medical records, employment or financial records, etc.). Information I seek is evidence of a very serious crime committed against me. The crime is continuous in nature and legal remedy is still possible. I respectfully submit that I am entitled to this information. More importantly, this information will greatly assist me in establishing the truth and pursuing reunification with my son. I submit that establishing facts regarding his abduction will not compromise my son's rights in any manner. To the contrary, it will greatly assist him in understanding a very important aspect of his life – a serious crime of child abduction of which he is a victim just like me. I request your office to reconsider your position, review the information I seek, and release it to me after appropriate redaction, if any is

required. If you believe that you could release some of the information, but not all, I would very much like to discuss that possibility.

Issue # 2 – Identifying Information

I believe that the supplemental information I provided (dated October 19, 2011) includes the identifying information you seek. It includes, as Attachment 4, a birth certificate for my son, which clearly identifies his name ("Soumitra [REDACTED] K[REDACTED]"), date of birth (March [REDACTED], 1990) and place of birth ([REDACTED], [REDACTED] California). It also identifies me as his father. I had also provided, as Attachment 1, a copy of my current United States passport. It includes my date of birth ([REDACTED]) as well as place of birth (India). I was born in Mumbai, India. Finally, I had also provided, through Attachment 3, documentary evidence of our residential address (i.e. my son, my former wife and I) in 1990. We lived at [REDACTED], El Toro, California 92630.

I submit that the foregoing information and documentary evidence addresses Issue #2.

Issue # 3 – Personal Verification

I declare, certify, verify or state that, under penalty of perjury under the laws of the United States of America, the foregoing is true and correct. I also declare, certify, verify or state that, under penalty of perjury under the laws of the United States of America, all statements and information from attached communication (dated October 8, 2011 and October 19, 2011) are true and correct.

I sincerely hope that you reconsider my request.

Respectfully,



Avinash B. Kulkarni

EXHIBIT 5



United States Department of State

Washington, D.C. 20520

DEC 19 2011

Case No.: 201108461

Mr. Avinash B. Kulkarni
826 Applewilde Drive
San Marcos, CA 92078

Dear Mr. Kulkarni:

I refer to your request dated October 8 and 19, 2011, under the Freedom of Information Act (Title 5 USC Section 552), and to Mary Therese Casto's letter to you dated October 25, 2011.

After carefully reviewing your request, the Department has determined that the information you seek about Soumitra Avinash Kulkarni cannot be given to third parties absent his written consent. The release of such material (if any existed) would constitute a clearly unwarranted invasion of personal privacy. See *Department of State v. Washington Post Co.*, 456 U.S. 595, 601 (1982). As such, the material, would be exempt from release under subsection (b)(6) of the Freedom of Information Act, Department of State Regulation (22C.F.R. §171.12(a), and possibly the Privacy Act (Title 5 USC Section 55a.) Therefore, we are closing the case pending receipt of an authorization from Soumitra Avinash Kulkarni.

Sincerely,

A handwritten signature in cursive script, appearing to read "Sheryl Walter".

Sheryl Walter
Director
Office of Information Programs and Services

EXHIBIT 6



December 2001

Issues in Resolving Cases of International Child Abduction by Parents

Janet Chiancone, Linda Girdner, and Patricia Hoff

Many children who are abducted to other countries by parents are never returned to the United States. A parent who is left behind when a child is abducted to another country faces daunting obstacles to finding and recovering the child. At first, the left-behind parent does not know who can or will help. The parent's emotional and financial resources soon are stretched to the limit. When years pass without the return of the child, the parent is left with unresolved grief. As one parent has stated, "It's worse than if your child died, because you cannot say the child is at peace now. You live every day wondering if your child is OK, if she is being abused or neglected. You never get over it." Often, the parents whose children are returned do not want to let their children out of their sight. They live constantly looking over their shoulders—believing that it could happen again.

Parents who abduct their children to other countries are not that different from parents who abduct their children to other States.¹ They often have young children. They usually have support from family or other individuals for what they are doing. They generally do not value the other parent's relationship with the child. Some are convinced that their actions are justified because they believe they rescued their child from the hands of an abusive parent. Many feel disenfranchised from American society, and separation and divorce have

intensified their sense of alienation. Some are fleeing domestic violence, whereas others are controlling and abusive themselves.

Many abducting parents go home after their marriages break up. For most international abductors, home is in another country with a different legal system, social structure, culture, and language. These differences—plus physical distance—make locating, recovering, and returning internationally abducted children especially complex and problematic.

Background on International Parental Abduction

Parental abduction is defined as the "taking, retention, or concealment of a child or children by a parent, other family member, or their agent, in derogation of the custody rights, including visitation rights, of another parent or family member" (Girdner, 1994a:1-11). Although abductors may be other family members or their agents (e.g., a girlfriend, boyfriend, grandparent, or even a private investigator), in most cases the abductor is the child's parent (Girdner, 1994a).

In 1988, a nationwide telephone household survey helped researchers estimate the number of family abductions (to both

A Message From OJJDP

The criminal abduction of one's child is painful enough to any parent, but that anguish is compounded when the missing child has been removed from the country by an abducting parent.

The fact that many kidnapped children who are taken to other countries are never returned to their families only intensifies the trauma suffered by parents who are victimized by such abductions and adds to their anxiety for the recovery and return of their children. To understand more clearly the challenges that these cases present, OJJDP has funded a study designed to identify barriers encountered by those seeking to resolve cases of international child abduction by parents.

This Bulletin features key findings from that research, which was conducted for OJJDP by the American Bar Association Center on Children and the Law. The Bulletin also provides an overview of international parental abductions and describes the legal framework impacting such cases.

It is our hope that the critical information offered herein from a variety of knowledgeable sources—public and private—will promote understanding of the obstacles faced by those seeking to reunite children unlawfully removed from this country with their families and thus contribute to overcoming these barriers to recovery.

domestic and international destinations) (Finkelhor, Hotelling, and Sedlak, 1990). This study, known as the National Incidence Study on Missing, Abducted, Run-away, and Thrownaway Children in America (NISMA²),² categorized cases as follows:

- ◆ “Broad scope” cases are those in which a family member either took a child in violation of a custody agreement or decree or failed to return or release a child at the end of a legal or agreed-upon visit (in violation of a custody agreement or decree) and kept the child away at least overnight. In 1988, an estimated 354,100 children were abducted under this definition.
- ◆ “Policy focal” cases fit the broad scope definition but also have at least one of the following characteristics: (1) the abductor attempted to conceal the taking or whereabouts of the child and prevent contact between the other parent and the child, (2) the child was transported out of State, or (3) evidence existed that the abductor intended to keep the child indefinitely or affect custodial privileges permanently. About 46 percent (163,200) of the broad scope cases in 1988 fell into this narrower definition (Finkelhor, Hotelling, and Sedlak, 1991). All international parental abductions are categorized as policy focal.

International abduction destinations vary, often depending on whether a country is easily reached by airline, whether a country's courts are unwilling to enforce foreign custody orders, and whether family support is available for foreign-born abductors fleeing to their home country (Hegar, 1990). Previous research has found that countries with the greatest volume of both incoming and outgoing applications under a multilateral international treaty (i.e., the Hague Convention, as discussed below) are the United States, the United Kingdom, Canada, Germany, France, and Mexico (Agopian, 1987; Markey, 1993).

The Legal Framework

Civil law. The Hague Convention on the Civil Aspects of International Child Abduction (Hague Convention) is an international treaty currently in force between the United States and 50 other countries. The treaty only applies between countries that are both parties to the Convention. The implementing legislation in the United States, enacted in 1988, is the International

Hague Convention Countries and Effective Dates*

Argentina	6/1/91	Luxembourg	7/1/88
Australia	7/1/88	Former Yugoslav	
Austria	10/1/88	Republic of Macedonia	12/1/91
Bahamas	1/1/94	Mauritius	10/1/93
Belgium	5/1/99	Mexico	10/1/91
Belize	11/1/89	Monaco	6/1/93
Bosnia-Herzegovina	12/1/91	Netherlands	9/1/90
Burkina Faso	11/1/92	New Zealand	10/1/91
Canada	7/1/88	Norway	4/1/89
Chile	7/1/94	Panama	6/1/94
China:		Poland	11/1/92
Hong Kong Admin. Region	9/1/97	Portugal	7/1/88
Macau	3/1/99	Romania	6/1/93
Colombia	6/1/96	St. Kitts/Nevis	6/1/95
Croatia	12/1/91	Slovak Republic	2/1/2001
Cyprus	3/1/95	Slovenia	4/1/95
Czech Republic	3/1/98	South Africa	11/1/97
Denmark	7/1/91	Spain	7/1/88
Ecuador	4/1/92	Sweden	6/1/89
Finland	8/1/94	Switzerland	7/1/88
France	7/1/88	Turkey	8/1/2000
Germany	12/1/90	United Kingdom	7/1/88
Greece	6/1/93	Bermuda	3/1/99
Honduras	6/1/94	Cayman Islands	8/1/98
Hungary	7/1/88	Falkland Islands	6/1/98
Iceland	12/1/96	Isle of Man	9/1/91
Ireland	10/1/91	Montserrat	3/1/99
Israel	12/1/91	Venezuela	1/1/97
Italy	5/1/95	Zimbabwe	8/1/95

*Date each country's treaty with the United States took effect. This list is current as of publication. The most up-to-date list is available on the Web at travel.state.gov/hague_list.html.

Child Abduction Remedies Act (ICARA), 42 U.S.C. §§ 11601–11610.

A Hague Convention proceeding is a civil proceeding brought in the party country to which the child was abducted or in which the child is retained. If the Hague proceeding is commenced within 1 year of the abduction or retention, the judge must order the child returned, usually to the country of habitual residence. Return is discretionary if more than 1 year has passed and the child is settled in the new environment. The abducting parent can raise defenses, but the defenses are purposely limited. A Hague Convention case is not about the “best interests of the child” but rather is about returning the child to the jurisdiction that should hear the custody matter. A petition for the return of a child can be brought by a parent with a sole or joint custody order or by a parent who does not yet have a custody order.

Although some countries have other inter-country agreements concerning abduction in addition to the Hague Convention, the

United States currently does not. If a child is abducted to a country that is not a party to the Hague Convention or if the child was abducted before the country became a party, then the Hague Convention does not apply. In such instances, the left-behind parent has very few options. The courts in the other country do not have to honor a custody order issued by a U.S. court. Sometimes, the parent's only option is to pursue the custody case in the courts of the other country, where the laws, the court system, and often the language are unfamiliar. Pursuing cases in this way has worked in some countries but not in others.

When a child of a custodial parent in another country is abducted to the United States, the parent has the option of asking the court in the jurisdiction in which the child is found to enforce the foreign custody decree. This remedy is provided under section 23 of the Uniform Child Custody Jurisdiction Act, which creates the duty of the court to recognize and enforce foreign custody orders as long as reasonable notice and opportunity to be

Article 7 of the Hague Convention

Central Authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their respective States to secure the prompt return of children and to achieve the other objects of this Convention. In particular, either directly or through any intermediary, they shall take all appropriate measures—

- a. To discover the whereabouts of a child who has been wrongfully removed or retained.
- b. To prevent further harm to the child or prejudice to interested parties by taking or causing to be taken provisional measures.
- c. To secure the voluntary return of the child or to bring about an amicable resolution of the issues.
- d. To exchange, where desirable, information relating to the social background of the child.
- e. To provide information of a general character as to the law of their State in connection with the application of the Convention.
- f. To initiate or facilitate the institution of judicial or administrative proceedings with a view to obtaining the return of the child and, in a proper case, to make arrangements for organizing or securing the effective exercise of rights of access.
- g. Where the circumstances so require, to provide or facilitate the provision of legal aid and advice, including the participation of legal counsel and advisors.
- h. To provide such administrative arrangements as may be necessary and appropriate to secure the safe return of the child.
- i. To keep each other informed with respect to the operation of this Convention and, as far as possible, to eliminate any obstacles to its application.

The full text of the Convention is available on the Web at travel.state.gov/hague_childabduction.html or at hchc.net.

heard were given to all affected persons. Section 105 of the Uniform Child Custody Jurisdiction Act also requires recognition and enforcement of foreign custody orders made under factual circumstances in substantial conformity with the Act.

Criminal law. All States in the United States have laws that make parental abduction, often called criminal custodial interference, a crime. These laws vary from State to State as to whether they cover abductions that occur before a custody order has been issued and abductions involving joint custodial parents. In some States, an abduction is a felony only if the child is taken across State lines.

If a State felony warrant has been issued in a case of parental abduction and the abductor has fled the State, then it is possible to obtain a warrant for unlawful flight to avoid prosecution (UFAP) under the Federal Fugitive Felon Act. Obtaining a UFAP warrant is an important step toward possibly gaining greater law enforcement assistance with the case, such as involvement of the Federal Bureau of Investigation (FBI).

In 1993, the U.S. Congress enacted the International Parental Kidnapping Crime Act (18 U.S.C. § 1204), making the abduction of

a child to another country or the retention of a child in another country a Federal felony. The Act specifies that, where applicable, the Hague Convention should take priority as a remedy for returning the child.

Barriers to extradition make these criminal remedies less effective than they may seem. Some States do not wish to bear the costs of extradition. Often, parental abduction is not an extraditable offense in the country to which the child was abducted. In other cases, the country may have a policy not to extradite its own citizens.

OJJDP-Funded Research

Under a grant from the Office of Juvenile Justice and Delinquency Prevention (OJJDP), researchers at the American Bar Association (ABA) Center on Children and the Law carried out a study to identify barriers to resolving cases of international parental child abduction. The project included the following major components:

- ◆ A survey of parents in the United States whose children were abducted to or retained in other countries.
- ◆ A survey of Central Authorities, the entities responsible for implementing

the Hague Convention in participating countries.

- ◆ Documentation of “good practices” in dealing with international child abduction, which were collected from leading agencies, organizations, and practitioners.

Little social science research has been conducted on international parental child abduction. This study is one of the first attempts to learn extensively about experiences of left-behind parents, practices of Hague Convention Central Authorities, and strategies that can be used by attorneys, judges, law enforcement personnel, and other professionals to assist in recovering abducted children quickly and safely. The study was completed in 1998 (with data collected during 1995–97). The findings are not new, but they still have relevance for practitioners and policymakers.

The full report on the study (Chiancone and Girdner, 1998)³ presents study findings and suggests effective ways to reduce barriers and resolve cases of international child abduction. It also includes detailed information on the project’s research design and methodology. This Bulletin provides an overview of major survey findings, selected good practices, and recommendations.

Survey of Left-Behind Parents

The ABA Center on Children and the Law worked with three national missing children’s organizations—the National Center for Missing and Exploited Children (NCMEC), in Alexandria, VA; Child Find of America, Inc., in New Paltz, NY; and Vanished Children’s Alliance, in San Jose, CA—to survey parents whose children had been taken to or retained in another country by the other parent. The objective of the survey was to document the problems these left-behind parents encountered in attempting to recover their children. With this objective in mind, the researchers designed the survey to accomplish the following:

- ◆ Identify circumstances surrounding the abductions.
- ◆ Identify basic demographic and other social/cultural characteristics of the families and abductors.
- ◆ Identify legal and administrative procedures that were available as preventive measures.

- ◆ Understand left-behind parents' perceptions of how various governmental and nongovernmental agencies responded.
- ◆ Assess social and financial costs to left-behind parents.
- ◆ Increase knowledge about the role of missing children's organizations and other entities with regard to international abductions.

The survey drew responses from 97 parents (a 63-percent response rate), who described their experiences and offered insight into the obstacles they faced when trying to locate and recover their children. The following sections summarize and discuss major survey findings.

Destinations

Abductions occurred to locations throughout the world. Surveyed parents listed 46 countries as abduction destinations. Latin American countries were the destinations of nearly one-third of reported abductions; European countries of about one-fifth. About one-fourth of abductions were to Muslim countries. One-third of abductions were to countries that were parties to the Hague Convention.

Parents

Abductors and left-behind parents often differed in terms of background, citizenship, and education. Most were of different nationality (83 percent), ethnicity (69 percent), and religion (58 percent). Sixty-two percent of abductors were citizens of another country only, 23 percent held U.S. citizenship only, and about 15 percent held dual citizenship. One-half of abductors had a high school degree, its equivalency, or some college credits. Left-behind parents generally had more education than abductors.

The survey also revealed economic differences between abductors and left-behind parents. Economic status at the time of the abduction was generally better for left-behind parents than for abductors. Almost three-fourths of abductors earned less than \$25,000 per year, approximately 35 percent earned less than \$15,000, and 20 percent had no income. Left-behind parents, on the other hand, were distributed relatively evenly across the income range, although most had incomes under \$35,000. Nearly three times as many left-behind parents as abductors had incomes of \$55,000 or more. Far fewer abductors than left-behind parents were employed

full-time, and nearly twice as many abductors were unemployed.

Mothers and fathers were equally likely to be abductors, although their patterns of destination differed. Mothers were more likely to take their children to Latin America, and fathers were more likely to take their children to the Middle East. Europe was a common destination of both mothers and fathers. These destination patterns reflected patterns of intermarriage between men and women from the United States and other countries.

Most left-behind parents reported that abductors had connections to the country to which the child was abducted, by speaking the country's language (83 percent), having family there (76 percent), living there as a child (69 percent), and/or growing up primarily there (68 percent). The greatest number of abductors had family in the destination country and grew up there, and more than one-half had close friends living there. About one-third had employment or business interests in the destination country. It is likely that these abducting parents perceived the abduction as a return "home," where they would receive positive emotional support and perhaps have greater economic and employment opportunities. In addition, they would have help in caring for the abducted child.

Abducted Children

The number of children taken in a single incident of abduction ranged from one to three; in most cases (70 percent), only one child was taken. Gender did not appear to be a factor in the abduction, as nearly equal numbers of boys (61) and girls (65) were abducted.



Abducted children tended to be young. The youngest was about 5 months old, the oldest was 12½ years old. The mean age of abducted children was 5 years. These findings are similar to those of other studies (Finkelhor, Hotaling, and Sedlak, 1990; Forehand et al., 1989; Agopian, 1981). Perhaps abductors perceive that younger children will be more controllable and offer less resistance during the abduction. However, taking a very young child (e.g., an infant) may present a separate set of problems for the abductor in terms of meeting the child's physical needs (e.g., changing diapers, bottle-feeding) and attracting attention (e.g., from fellow travelers, airport officials).

Recovery

About two-fifths of the surveyed parents (41 percent) reported that the abducted child had been recovered by the time of the survey. In all, about 70 percent of responding parents reported that the child had been located, and 25 percent said they had always known the child's location.

Perhaps not surprisingly, recovery and length of separation appear to be linked. Separation was significantly shorter in cases that resulted in recovery than in those that did not. In one-half of cases in which the child was recovered, the separation lasted less than 1 year, whereas in nearly one-half of cases in which the child was not recovered, the child had been gone for more than 5 years. In most cases of recovered children (nearly 88 percent), the separation was at least 6 months. More than one-half of abducted children who were located by left-behind parents were gone at least 4 months before they

Effects of Abduction on Children: A Summary of Research

Existing research on the trauma suffered by children who have experienced parental abduction clearly shows that a long period of separation from the left-behind parent is particularly damaging. Agopian's study (1984) found that the length of separation from the left-behind parent greatly influenced the emotional impact of the abduction experience on the abducted child. Generally, children held for shorter periods (less than a few weeks) did not give up the hope of being reunited with the other parent and consequently did not develop an intense loyalty to the abducting parent. In some ways, they were able to view the experience as a type of "adventure."

Victims of long-term abductions, however, fared much worse. They were often deceived by the abducting parent and moved frequently to avoid being located. This nomadic, unstable lifestyle made it difficult for the children to make friends and settle into school (if they attended school at all). Over time, younger

children could not easily remember the left-behind parent, and this had serious repercussions when they were reunited. Older children felt angry and confused by the behavior of both parents—the abductors for keeping them away and the left-behind parents for failing to rescue them.

Terr's study (1983) reported on a sample of 18 children who received psychiatric evaluations after being recovered from abduction (or after being threatened with abduction and/or experiencing an unsuccessful abduction attempt). Nearly all (16) of the children suffered emotionally from the experience. Their symptoms included grief and rage toward the left-behind parent in addition to suffering caused by "mental indoctrination" perpetrated by the abducting parent. Similarly, a study of a sample of 104 parental abductions drawn from National Center for Missing and Exploited Children cases revealed that, as a result of the abduction, more than 50 percent of the recovered children experienced symptoms of emotional distress, including anxiety, eating problems,

and nightmares (Hatcher, Barton, and Brooks, 1992).

Senior, Gladstone, and Nurcombe (1982) reported that recovered children often suffered from uncontrollable crying and mood swings, loss of bladder/bowel control, eating and sleep disturbances, aggressive behavior, and fearfulness. Other reports have documented abduction trauma such as difficulty trusting other people, withdrawal, poor peer relations, regression, thumb sucking, and clinging behavior (Schetky and Haller, 1983); distrust of authority figures and relatives and fear of personal attachments (Agopian, 1984); and nightmares, anger and resentment, guilt, and relationship problems in adulthood (Noble and Palmer, 1984).

It is likely that children who are victims of international abduction may suffer effects beyond those mentioned above. This would especially be the case if they are required to adapt to different norms and values and even learn a different language.

were found. In general, separation was significantly shorter in abductions to Hague Convention countries than in those to non-Hague countries.

In cases that resulted in recovery, nearly all respondents reported traveling to another country to pick up the child, although most faced barriers to accomplishing this task. In many cases, once the child had been located and recovered by law enforcement or other officials, parents who wished to travel to pick up the child had to do so immediately. Some parents found it difficult to obtain an affordable plane ticket with little notice or to get a passport issued quickly. In addition, some parents reported being fearful of making the trip, either because of difficulties in traveling or communicating in the other country or because of concerns about the safety of their other children who remained in the United States.

Recovery of abducted children took many different paths. Courts (in both Hague Convention countries and non-Hague countries) were involved in some cases, law enforcement agencies in others. Mercenaries were involved in a few cases. In some cases, the abductor voluntarily returned the child; in others, the child

directly (usually secretly) contacted the left-behind parent.

The findings of this study differ from those of NISMART (Finkelhor, Hotaling, and Sedlak, 1990) and other studies in that far fewer children in this study were recovered than were located. NISMART, which looked at a nationally representative sample that included both domestic and international abductions, found that the average duration of abduction was about 11 days. About 70 percent of the NISMART abductions were resolved in 1 week (Plass, Finkelhor, and Hotaling, 1995). Forehand et al. (1989) found that most of the children in the 17 cases they reviewed were gone between 3 and 7 months. The duration of abductions described in other literature ranges from several days (Schetky and Haller, 1983) to 3 years (Terr, 1983).

Abduction Plans and Threats

Nearly one-half of the abductions reported by left-behind parents occurred during a court-ordered visitation between the abducting parent and abducted child. Eighty percent of parents said they believe the abductor received assistance from family members in carrying out the

abduction or making it successful. One-fifth reported that the child was moved by the abductor from country to country.

Some respondents were able to identify ways in which the abductor planned for the abduction (see table 1). Most of this planning activity indicates that abductions were premeditated rather than spur-of-the-moment acts. Abductors prepared economically by saving money, waiting for tax refunds, liquidating assets, and quitting or changing jobs. They also prepared for longer range needs (e.g., the child's schooling) by gathering legal documents and papers such as birth certificates and school records. One-third of the parents who reported planning actions said the abductor received visits from friends or family members from another country prior to the abduction. One-third said the abductor made a preparatory visit to the country to which the child was later abducted. Left-behind parents' reports of such visits, combined with their common belief that abductors had help (mainly from family or friends) in carrying out the abduction, indicate that most abductors did not act alone. Nearly one-fourth of left-behind parents reported that the abductor kept the child late after a visit prior to the actual abduction, perhaps to prevent the

Table 1: Abductor Planning Actions

Specific Action	Percent of Cases (N=97)
Saved money or waited for expected cash payment	58
Gathered, destroyed, or hid legal documents and records (birth certificates, school records)	54
Liquidated assets (sold business, investments, etc.)	53
Quit or changed jobs	45
Applied for a visa or passport for the child from the U.S. Department of State	39
Moved residence	36
Received visits from friends or family members from another country to assist with the abduction	34
Made preparatory visit to country to which child was later abducted	32
Applied for a visa or passport for the child from embassy or consulate of another country	31
Kept the child late after a visit prior to actual abduction	24

Note: Twenty left-behind parents (21%) also reported that they believed the abductor had secretly involved the child in planning the abduction.

left-behind parent from immediately becoming concerned when the actual abduction occurred. One-fifth of parents said they believe the abductor secretly involved the child in planning the abduction; such cases are particularly disturbing and suggest a high level of planning.

In many cases, abductors made serious threats prior to the actual abduction (see table 2). Eighty percent of left-behind parents reported that these previous threats included telling them they would never see their child again. Sixty percent reported that abductors threatened their lives, and more than 20 percent reported that the abductor threatened the life of the abducted child. Such threats would only have increased the left-behind parents' fears once the abduction had taken place.

Fifty-one percent of left-behind parents took measures to prevent the abduction. These measures included seeking supervised visitation, custody orders prohibiting removal of the child from the jurisdiction, and passport denial or restrictions.

Level of Satisfaction With Law Enforcement's Initial Response

The survey revealed high levels of dissatisfaction with law enforcement's initial response to parents' reports of abductions. More than 80 percent of parents contacted law enforcement within 24

hours of the abduction. Two-thirds said they received little or no assistance from the first law enforcement official they spoke with. Examples of unsatisfactory response included being told that the child had to be missing for a prescribed period of time before police could take action or that police could not do anything unless there was evidence that the child had left the State.

The study found that, unfortunately, parental abduction is still widely regarded as a private family matter. More than two-thirds of left-behind parents encountered individuals and organizations who seemed to regard parental abduction as a family problem that did not require legal intervention. One-third of parents reported that law enforcement officials would not take information about their cases because the officials saw the abduction as a domestic situation.

Private Sources of Assistance

In addition to contacting law enforcement agencies, parents relied on many other professionals for assistance in locating and/or recovering their children (see table 3). Most (87 percent) hired an attorney in the United States. More than one-half also hired an attorney from the destination country and/or a private investigator. One-fifth hired a rescuer or mercenary to attempt to recover the abducted child.

Table 2: Threats Made Prior to Abduction

Prior to the abduction, did the abductor ever threaten . . .	Number and Percent Responding "Yes" (N=84)*
your life?	50 (60%)
the life of your child?	18 (21%)
anyone else's life?	35 (42%)

* Thirteen parents (13 percent of all respondents) reported that no threats were made.

Costs of Search and Recovery

Left-behind parents pay a high price in cases of international abduction. Approximately one-half of the parents surveyed reported on the amount of money they spent in searching for and/or recovering abducted children (see table 4). These parents spent an average of \$33,500 for search and recovery efforts. About one-fourth of these parents spent \$75,000 or more. Although parents with higher incomes generally spent more money than those with lower incomes, more than one-half of parents across all income levels reported spending as much as or more than their annual income.

Left-behind parents also pay a high price in terms of their own emotional health. Eighty-five percent of parents turned to family and friends for emotional support. Slightly fewer than one-half relied on professional counselors or therapists for assistance in handling emotional problems. One-fifth said they used prescription drugs to cope with stress while their child was gone. Many parents reported a desire to establish stronger support systems and networking opportunities for parents who are victims of family abduction.

Obstacles to Search and Recovery

Researchers sought to identify the primary challenges parents faced in trying to locate and recover children abducted to foreign countries. A majority of respondents consistently named the following obstacles as presenting the greatest difficulties:

- ◆ Lack of sufficient funds.
- ◆ Difficulties with foreign laws and officials.
- ◆ Difficulties with U.S. laws.

Table 3: Professionals Used by Parents To Search For and Recover Abducted Children

	Number and Percent of Cases (N=97)
Attorney in the United States	84 (87%)
Attorney in destination country	53 (55%)
Private investigator	54 (56%)
Rescuer/mercenary	21 (22%)

- ◆ Judges' inexperience in handling international abduction cases.
- ◆ Inadequate response by law enforcement agencies.

These and other obstacles reported by parents are discussed below.

Lack of sufficient funds. A lack of sufficient funds was the obstacle that responding parents most frequently identified. This is not surprising, considering the large sums of money that parents reported spending. This perceived lack of funding, however, is related to other obstacles that respondents reported. Many parents who were frustrated by an inadequate investigative effort by law enforcement agencies hired a private investigator, and others hired a rescuer/mercenary. Hiring such professionals was in most cases very expensive. In addition, respondents who

Table 4: Expenditures by Parents To Search For and Recover Abducted Children

Category	Mean	Median	Range
Attorney hired in the United States	\$25,724	\$12,000	\$50–200,000
Attorney hired in other country	4,508	3,000	100–30,000
Court costs (U.S. and other country)	3,388	2,000	200–10,000
Other legal costs	2,397	1,250	100–10,000
Private investigator	3,987	2,000	200–40,000
Rescuer/mercenary	33,111	10,000	3,000–117,000
Travel costs	4,463	3,250	600–20,000
Communication costs	11,436	8,500	100–100,000
Therapy or counseling	5,660	3,000	100–15,000
Other costs*	34,784	7,000	500–300,000
Estimated total spent	61,238	33,500	10,000–270,000

Note: Not all respondents answered the question about expenditures. Some only reported the total amount spent and did not break down the cost into categories.

* "Other costs" included costs associated with psychological testing, expert testimony, lost time or loss of job (employment income), authentication of documents, fees for psychics, and bribes.

felt powerless in attempting to deal long-distance with a foreign country's officials and/or laws may have thought they would have been taken more seriously if they could have traveled to the country, which in some cases would have been very costly. Even the costs of long-distance telephone calls added up very quickly for these parents. Parents who were dissatisfied with their attorneys (in the United States and/or in a foreign country) may have believed that they could have hired better legal representation had more funds been available.

Difficulties with foreign laws and officials. Two obstacles listed frequently by parents—

difficulty working with foreign officials (64 percent of parents) and laws of other countries (74 percent)—may be inter-related. Although government officials and agencies in another country may seem to be uncooperative, they actually may simply be following that country's laws; in this case, the obstacle is the laws, not the officials or agencies. Among the difficulties some parents encountered in dealing with foreign government agencies were language barriers and a lack of concern on the part of agency personnel and officials. One parent reported that working with the foreign government was impossible because the "abductor married [a] prominent citizen" in the country.

Difficulties with U.S. laws. More than three-fourths of respondents identified "American laws" as an obstacle, and about one-half considered them an obstacle that posed a high level of difficulty. This obstacle could be related to another reported obstacle—"ease of exiting the United States" with an abducted child. Eleven parents specifically mentioned as a major obstacle the fact that parents crossing international borders with a child do not need to verify custody and/or permission from the other parent to do so.

Judges' inexperience. Nearly two-thirds of responding parents reported that a judge's inexperience in dealing with international parental abduction cases was a major obstacle in the search for and recovery of their child. This finding reinforces earlier research, which indicated that three-fifths of U.S. judges had handled either no international parental abduction cases or just

Prosecution of Parental Abduction Cases: A Summary of Research

Inadequate law enforcement response to parental abduction may be related to the fact that few jurisdictions have had much experience in prosecuting such cases. A nationwide survey of 74 prosecutor's offices, conducted by the American Prosecutors Research Institute (Klain, 1995), found that 78 percent of respondents handle only 1 to 5 parental abduction cases per year, 90.3 percent handle between 1 and 20 such cases per year, and only 4.2 percent handle more than 100 cases per year. The same survey found that just 1 in 25 prosecutor's offices has a specialized parental abduction unit. Most parental abduction cases (57.5 percent) are handled by nonspecialists or by designated attorneys, and the rest are handled by various designated units (domestic violence, family crimes, special assault, or child abuse).

The American Prosecutors Research Institute survey findings are supported by a study (Grasso, Ryan, and Wells, 1996) that examined 6 "promising" sites where 15 or more cases of parental abduction are prosecuted each year. With the exception of two specialized agencies devoted to parental abduction cases, all criminal justice agencies at these sites indicated that parental abduction cases make up only 5 percent or less of their total caseload. Even in jurisdictions with special expertise in handling parental abduction cases, these cases are often given "low priority."

one case (Girdner, 1994b). In some cases, parents may also have been referring to a foreign judge's refusal to enforce Hague Convention procedures. Other parents indicated frustration with foreign judges' refusal to honor existing U.S. court orders regarding custody (which the judge would not be required to do) or with a U.S. judge's unwillingness to issue protective measures that the respondent thought could have prevented the abduction (e.g., supervised visitation).

Inadequate response by law enforcement agencies. Left-behind parents gave law enforcement agencies mixed reviews. Many law enforcement agencies clearly were uninformed regarding the National Child Search Assistance Act, which mandates that law enforcement must enter the description of a missing child in the National Crime Information Center (NCIC) Missing Person File without a waiting period. Of great concern is the fact that two-thirds of parents reported an inadequate initial response from law enforcement agencies. Delayed response by law enforcement may have contributed to the success of abductions. In addition, many law enforcement officials seemed unaware of their obligation to investigate the whereabouts of the abductor and child. At the other end of the spectrum are those law enforcement officials who responded immediately, offering support and referring parents to additional resources. Although present in only a minority of cases, this quick response clearly made a difference in how parents viewed the investigation and gave them confidence in the overall law enforcement effort.

Private professionals' lack of knowledge. Nearly all surveyed parents hired a private attorney in the United States to pursue the return of the abducted child (or used the services of an attorney they had retained prior to the abduction), and one-half hired an attorney in another country. More than one-half hired a private investigator, and nearly one-fifth hired a rescuer/mercenary. As with law enforcement officials, the knowledge and skills of these professionals regarding international parental abduction varied widely.

Parents gave attorneys hired in the United States the lowest knowledgeability ratings of all private professionals. Only one-fourth of attorneys hired in the United States were rated as having moderate to very great knowledge regarding international parental abduction, compared with nearly one-half of attorneys

Factors Influencing Recovery: A Summary of Research

In cases of parental abduction, the left-behind parent's vigilance in searching for the abducted child can be one of the most significant factors in locating and recovering the child. Police involvement in locating the child can also be a critical factor.

In interviews conducted by Hatcher and Brooks (1994), about one-quarter (26.9 percent) of left-behind parents whose children had been recovered attributed the recovery to a lead they themselves established. Parents also said that recovery was aided by leads from the FBI (9.6 percent), a law enforcement officer (7.7 percent), an attorney (5.8 percent), a private citizen (5.8 percent), and missing children's organizations (3.8 percent). Janvier and colleagues

(1990) found that eight of the recovered children in their study were located by the police or other legal authorities, five by missing children's organizations, and three by the left-behind parent; one child was voluntarily returned by the abducting parent.

Another study indicates that immediate reporting to a law enforcement agency is related to a greater likelihood of recovery. Agopian (1981) studied the relationship between reporting and recovery and found that most parents whose children were recovered had notified authorities within 1 week of the child's disappearance, whereas only 2 percent of children were recovered in cases in which parents had notified police more than 1 month after the abduction.

hired in other countries. The reason for this difference may be that the U.S. attorneys were not necessarily hired for their previous experience in handling cases of international parental abduction. In fact, 39 percent of respondents said they used an attorney in the United States whom they had retained prior to the abduction, and many used the attorney who had handled their divorce or custody proceedings.

Rescuers/mercenaries received the highest knowledgeability ratings of all private professionals, with 77 percent of respondents reporting that the rescuer/mercenary they contacted had moderate to great knowledge about international parental abduction. However, only 21 parents in the sample even contacted a rescuer/mercenary.

Lack of information about government responsibilities. Parents' responses clearly reveal a high level of frustration with the U.S. Department of State's actions, in terms of the parents' expectations versus their actual experiences. Some comments indicate that many parents, even after going through the entire process of searching for and attempting to recover a child, do not fully understand the respective procedures and responsibilities of State, Federal, and foreign governments. It appears to be very difficult for left-behind parents to obtain information about where responsibilities in these cases lie and how to communicate with the agencies involved.

Perceived bias. A number of parents also believed they had encountered various biases when dealing with certain individuals

and institutions (law enforcement, judges, and foreign government agencies and officials). In all likelihood, this belief increased the perceived level of difficulty associated with a particular obstacle.

Survey of Central Authorities of the Hague Convention on the Civil Aspects of International Child Abduction

Under the Hague Convention, each party country is required to establish a Central Authority. Most of the duties of the Central Authority are enumerated in Article 7 of the Convention (see page 3).

Central Authorities are mentioned in law review articles about the Hague Convention, but they have received little focused attention in the literature. The major exception is an article by law professor Carol Bruch (1994), based on her interviews of Central Authority personnel in 10 countries (8 European countries, Israel, and the United States) in 1990 and 1992 and her observations of two intergovernmental meetings on the Convention at the Hague in 1989 and 1993. Bruch describes the responsibilities of the Central Authority under the Convention and relates some of the variations she found among the 10 Central Authorities she studied.

Variation in the operation of Central Authorities and the implementation of the Hague Convention across countries is an

important consideration in examining the effectiveness of the treaty. The Hague Convention has frequently been heralded as the means for prompt resolution of these difficult international abduction cases, but many experts in the field have become increasingly aware that both promptness and resolution in Hague cases depend a great deal on which countries are involved.

The ABA Center on Children and the Law surveyed Central Authorities regarding their experiences in handling cases of international parental abduction under the Hague Convention. The survey was conducted during late 1995 and early 1996, with a followup in early 1997. The objective of the survey was to identify similarities and differences in the structure and operation of Central Authorities and to assess the degree to which the Hague Convention is working across countries. The questionnaire included items about infrastructure (e.g., staffing), number of cases, countries most often dealt with, the Hague application process, and Hague proceedings and decisions. Respondents had the option to complete the questionnaire in English, French, or Spanish. Participation was voluntary.

The questionnaire was sent to all 57 Central Authorities existing at the time of the survey (1996–97). Included were Central Authorities in 44 countries, plus 10 provincial or territorial Central Authorities in Canada and 3 Central Authorities in the United Kingdom (England/Wales, Scotland, and Northern Ireland). The survey drew responses from 44 Central Authorities within 32 countries, representing a response rate of 73 percent of the countries surveyed. The following sections note major survey findings, discuss variations in procedures and outcomes revealed by the survey, and summarize implications of survey findings.

Major Survey Findings

Background and infrastructure. In more than two-thirds of the 32 responding countries, Central Authorities are located in justice departments or ministries. (The U.S. Central Authority is the Office of Children's Issues in the U.S. Department of State.) Central Authority staffs are small (about three persons) and generally spend less than one-half of their time on Hague cases. In about two-thirds of responding countries, Central Authorities have attorneys on staff.

Caseloads. Caseloads vary greatly across Central Authorities. In 1994, outgoing applications ranged from 1 case to 380 cases, with a mean of 45 and median of 13. Central Authorities most often identified the United States as one of the three countries most frequently dealt with, for all categories of cases (incoming and outgoing, return and access).⁴ The United Kingdom was next in all categories except outgoing access cases.

Hague application process. More than 80 percent of responding countries accept Hague applications in English; about 40 percent accept applications in French. Although French and English are the official languages of the Hague Convention, four Central Authorities indicated that they do not accept applications in either language (contrary to the Convention). More than 70 percent of responding Central Authorities open five or fewer incoming return cases and five or fewer outgoing return cases per month. The number of unresolved cases ranges greatly, from none to more than 800. The median number of unresolved cases is 10, for both incoming and outgoing cases. The exact location of the child is unknown in more than one-half of incoming cases.

Criminal charges. Depending on the country, pending criminal charges against the abductor in the country from which the child was taken may help or hurt efforts to recover the child. More than two-thirds of Central Authorities reported that criminal charges are sometimes helpful in their efforts to locate a child abducted to their country, and one-third reported that criminal charges are sometimes helpful in proceeding with a Hague case. On the other hand, four Central Authorities reported that in their country, some judges will not order a return if criminal charges are outstanding in the country from which the child was taken; one Central Authority indicated that any criminal charges must be dropped before it can proceed with a case.

Handling of cases. More than one-fourth of the countries with responding Central Authorities have other intercountry agreements or laws that may be used in lieu of the Hague Convention. Some respondents reported that these other agreements or laws have simpler procedures than the Hague Convention or are more effective in resolving access cases. Eighteen Central Authorities reported trying to secure voluntary returns; of these, about one-fourth reported no success,

and almost three-fourths reported a success rate of 25 percent or lower.

Hague proceeding. The majority of Central Authorities responding to the survey question about the Hague proceeding (26, or 90 percent) reported that the proceeding for incoming cases in their country is a hearing before a judge; the rest reported that it is an administrative proceeding. Ten Central Authorities reported that the Central Authority office will represent the parent in the Hague proceeding, and 17 reported referring applicant parents to attorneys. Seventeen Central Authorities reported that Hague applicants may be eligible for free legal assistance and representation.

Variations in Procedures and Outcomes

The findings from this survey clearly demonstrate that implementation and operation of the Hague Convention vary greatly across countries. Some variation is understandable, because the Central Authorities were established within each country's existing bureaucracy and the Hague proceedings occur within each country's existing judicial system. However, the wide range in case outcomes⁵ is perhaps the most troubling finding of the survey, as it reflects a lack of uniformity in application of the Hague Convention that goes beyond these structural explanations.

Several findings raise concerns about the appropriateness or efficacy of actions taken by a minority of Central Authorities. For example, French and English are official languages of the Hague Convention, and Article 24 of the Convention requires that Central Authorities accept applications and other documents in either language, although "a Contracting State may, by making a reservation in accordance with Article 42, object to the use of either French or English, but not both, in any application communication or other document sent to its Central Authority." In the survey, Central Authorities in four countries indicated that they would not accept applications in English or French, although this is expressly prohibited under Article 24.

The survey findings also reveal significant variations in caseloads, with heavy concentrations of cases in relatively few countries. At the time the survey was conducted, the majority of Central Authorities reported opening an average

of five or fewer cases of each type (incoming and outgoing, return and access) per month. Only 3 countries—the United States, the United Kingdom, and France—averaged more than 10 new cases per month in both the incoming and outgoing return categories. Asked to list the top three countries to which they send and from which they receive return cases, Central Authorities most frequently listed the United States in both categories. The next most frequently listed country, the United Kingdom, was mentioned about one-half as often as the United States for incoming return cases and about one-third as often for outgoing return cases. The next most frequently listed countries for both incoming and outgoing return cases were Germany, Canada, Australia, and France. The most frequently listed countries for incoming access cases were the United States, the United Kingdom, Canada, and France. For outgoing access cases, the most frequently listed countries were the United States, France, the United Kingdom, and Germany.

Implications

Clearly, the United States represents the largest share of the Hague caseload, followed by the United Kingdom. The United States is only 1 of 32 Hague countries responding to the survey, yet the caseload of children taken from or to the United States accounted for a substantial portion (more than 50 percent) of the combined caseloads of all 32 responding countries. Therefore, the performance of American attorneys and judges in handling incoming Hague cases and the performance of the U.S. Central Authority in processing applications for and monitoring progress of both incoming and outgoing cases are critical to the overall success of the Hague Convention worldwide.

Earlier research calls into question the performance of American judges and attorneys in handling Hague cases. In a nationwide survey of American judges and attorneys (Girdner, 1994b), 60 percent of judges reported that counsel before them rarely or never adequately informed them about the applicable provisions of the Hague Convention, almost 70 percent of attorneys reported that opposing counsel was not familiar with the Convention, and more than 60 percent of attorneys reported that judges they appeared before in Hague cases were not familiar with the Convention. Another survey of left-behind parents (Hatcher and Brooks, 1994) found that

more than three-fourths of the parents had attorneys with no previous experience in international abduction cases.

Selected Good Practices

The following sections present selected “good practices” in dealing with international parental child abduction. Several different perspectives are represented: government agencies (at the Federal, State, and local levels) and private sector organizations in the United States; the United Kingdom’s Hague Central Authority; and Canada’s Missing Children Registry. Each section includes a quote reflecting the organization’s philosophy, background information, and a list of good practices.

National Center for Missing and Exploited Children

After parents have done all they can to work within the parameters of the law, both domestic and foreign, and still they can't get their children back, they often become desperate. We understand how frustrating it can be, and work with parents to exhaust every opportunity, every option.

—Ernie Allen,
President, National Center for
Missing and Exploited Children

The National Center for Missing and Exploited Children (NCMEC) was established in 1984 as a private, nonprofit organization to serve as a clearinghouse for information on missing and exploited children. Funding for NCMEC comes from the U.S. Department of Justice and many private corporate donors that contribute time, money, and technology. NCMEC provides technical assistance to individuals and law enforcement agencies in cases involving parental abduction, stranger abduction, runaway children, and child exploitation.

Locating abducted and missing children is one of NCMEC’s critical roles. In carrying out this role, NCMEC coordinates with law enforcement agencies at the local, State, Federal, and international levels. It has direct access to the NCIC missing children’s database. It also disseminates photographs and descriptions of missing children. The advent of the Internet has made it possible for NCMEC to expand globally its nationwide photo distribution network. NCMEC now maintains a Web site on which photos of missing children

are posted and accessible to anyone around the world with access to the Internet.

NCMEC handles incoming Hague Convention child abduction cases on behalf of the U.S. Central Authority in the Department of State. Two of the most pressing tasks associated with this responsibility are locating children abducted to the United States or wrongfully retained in the United States and finding lawyers to represent the foreign parent in court proceedings brought in the United States under the Convention. NCMEC’s International Division carries out the Central Authority’s responsibilities in incoming international abduction cases.

NCMEC, in cooperation with the Office of Children’s Issues in the U.S. Department of State, has assumed a greater role in outgoing Hague Convention cases than it previously had. NCMEC provides parents seeking to invoke the Convention with instructions on how to do so and helps parents prepare Hague applications and obtain supporting documents.

NCMEC notes the following good practices aspects of its operations:

- ◆ NCMEC’s state-of-the-art technology—including its Web site and an extensive computer network that makes possible worldwide transmission of images of abducted children and information about them—is revolutionizing the search for missing children.
- ◆ Incoming Hague petitions get immediate response. Efforts are begun promptly to locate the child, find an affordable attorney, and educate the judges and lawyers involved about the Hague Convention.
- ◆ Criminal warrants can be very effective in Hague and non-Hague cases.
- ◆ As part of a transborder task force, NCMEC is working with Canadian counterparts to develop an intercept program for Canadian children transiting through the United States who are at risk of further abduction.
- ◆ Educating parents, lawyers, and judges on abduction prevention measures is a priority.
- ◆ NCMEC’s institutional philosophy—to go the extra mile to recover a missing child—is reflected in the staff’s cooperative approach to cases.
- ◆ Effective interaction between NCMEC and local, State, Federal, and

international law enforcement officers and prosecutors helps find and recover abducted children.

For additional information, write National Center for Missing and Exploited Children, Charles B. Wang International Children's Building, 699 Prince Street, Alexandria, VA 22314; phone 800-THE-LOST (843-5678); or visit the Web site at missingkids.com.

Vanished Children's Alliance

We try to give families of abducted children a little sense of control over an uncontrollable situation.

—Georgia K. Hilgeman,
Executive Director,
Vanished Children's Alliance

The Vanished Children's Alliance (VCA) is a nonprofit organization based in San Jose, CA. For more than two decades, VCA has assisted left-behind parents of abducted children. Its mission is child focused.

Once a case is registered with VCA in accordance with protocol, parents receive services free of charge. A toll-free telephone line (800-826-4743) is available to receive reports of sightings of abducted children and requests for help. VCA plays a crucial role in encouraging parents to take an active part in the search for their children. It also coordinates closely with law enforcement agencies to find abducted children and return them to the appropriate jurisdiction so that custody-related disputes can be resolved by the courts.

VCA suggests the following good practices for nonprofit organizations seeking to assist left-behind parents:

- ◆ Listen attentively and give support to left-behind parents on a long-term basis, including preparing them for reunification with the abducted child.
- ◆ Give parents some control over their lives by encouraging their active involvement in resolving their cases.
- ◆ Once a case is registered, become actively involved in trying to locate the abducted child, including coordinating closely with law enforcement in a positive, nonconfrontational manner.
- ◆ Acting as the left-behind parent's liaison, get all the key players (e.g., law enforcement, nonprofit organizations, Department of State) to work together and share pertinent case information.
- ◆ Help prevent abductions by taking the following actions: (1) talking a parent

out of a threatened abduction, (2) contacting law enforcement officials to alert them to potential abductions, and (3) suggesting various general provisions that can be included in a court order and also suggesting other steps a parent can take to stop an abduction before it happens.

For additional information, write Georgia K. Hilgeman, Executive Director, Vanished Children's Alliance, 2095 Park Avenue, San Jose, CA 95126; phone 408-296-1113; e-mail ghilgeman@compuserve.com; or visit the Web site at vca.org/.

New York State Missing and Exploited Children Clearinghouse

Parents need someone to go to bat for them.

—Diane Vigars, formerly of the
New York State Missing and Exploited
Children Clearinghouse

All 50 States and the District of Columbia currently have missing children's clearinghouses, which are established by executive order or legislative mandate. Setting up clearinghouses has proved less difficult than providing them with adequate funding to carry out their tasks. Some States have failed to appropriate resources for maintaining their clearinghouses, which then have become merely mailing

addresses for individuals seeking information on missing children.

The New York State Missing and Exploited Children Clearinghouse was established in 1987 to carry out many diverse activities relating to missing and exploited children. It has a long track record of good work and sufficient funding. Because of New York's major international airports and proximity to Canada, the State's clearinghouse sees many cases of international parental abduction. New York's statutes relating to criminal custodial interference do not cover precustodial abductions and treat postcustodial abductions as a felony only if a child has been taken out of State. Perhaps especially in States with statutes similar to New York's, clearinghouses can play an important and active role in resolving these difficult cases.

The New York State Missing and Exploited Children Clearinghouse suggests the following good practices for State clearinghouses:

- ◆ Take abduction prevention seriously.
- ◆ Listen, seek to understand, and do not make biased judgments.
- ◆ Provide information to and educate other practitioners.
- ◆ Promptly enter children in NCIC and investigate their whereabouts.



- ◆ Coordinate case efforts with law enforcement and other agencies.
- ◆ Facilitate community-based education and prevention.
- ◆ Act as State contact for the U.S. Central Authority in Hague Convention cases.

For additional information, write New York State Missing and Exploited Children Clearinghouse, 4 Tower Place, Albany, NY 12203; phone 800-346-3543; or visit the Web site at criminaljustice.state.ny.us/missing.

Child Abduction Unit, Kern County (California) District Attorney's Office

The Child Abduction Unit of the Kern County District Attorney's Office exists to help parents recover children who have been abducted, to prosecute those who violate criminal laws related to child abduction, and to represent the Superior Court . . . when the Court orders the District Attorney to locate and recover missing children.

—Notice, Kern County District Attorney's Office

California was the first State to give its district attorneys and their investigators both civil and criminal legal tools to locate and return parentally abducted children. Prosecutors have the option of using the most appropriate remedy—civil, criminal, or a combination of the two—to locate and recover an abducted child. Once the child is returned to the jurisdiction, the courts can sort out the underlying custody and visitation issues. Investigators working in concert with prosecutors perform the indispensable legwork of searching for the abducted child and then taking the necessary steps to bring the child back to the jurisdiction. The Kern County District Attorney's Office is one of many district attorney's offices in California that have established child abduction units to implement the law. To refine and improve practices, statewide meetings are held to bring together criminal justice system professionals assigned to handle child abduction cases.

In effect for about two decades, California's innovative approach to custodial interference and abduction cases is now being more widely implemented. The Uniform Child-Custody Jurisdiction and Enforcement Act, approved in July 1997 by the National Conference of Commissioners on Uniform State Laws, includes

several sections modeled on California law that give prosecutors and law enforcement in States that adopt the Act new flexibility and additional civil tools to help find and recover abducted children.

The Child Abduction Unit of the Kern County District Attorney's Office notes the following good practices aspects of effective law enforcement involvement in family abduction cases:

- ◆ Agencies should have a protocol for handling family abduction cases.
- ◆ Quick response by law enforcement to family abductions may lead to early intervention and return of the child.
- ◆ Criminal warrants may be needed if the Hague Convention remedy fails or is unavailable.
- ◆ Law enforcement recovery of abducted children has numerous advantages over self-help recovery by the parent.

For additional information, write Kern County District Attorney's Office, 1215 Truxtun Avenue, Bakersfield, CA 93301; phone 661-868-2340; or visit the Web site at www.co.kern.ca.us/da/.

Santa Clara County (California) District Attorney's Office

Child abduction cases are different from ordinary criminal cases because of the ongoing familial relationship. Children need a relationship with both parents. We have many tools at our disposal in deciding how to proceed. As prosecutors, we must look at the welfare of the children and ask: "How do we serve their best interests?"

—Janet Heim,
Deputy District Attorney, Santa Clara County District Attorney's Office,
Parental Kidnapping Investigation Unit

Location and a speedy safe recovery of the child are the investigator's main concerns. The investigator and deputy district attorney need to work closely together to best accomplish those goals.

—Melanie Headrick,
Criminal Investigator II,
Team Leader, Santa Clara County District Attorney's Office

The Santa Clara County District Attorney's Office has a special unit that deals with the criminal and civil aspects of international and interstate parental abduction cases. Its functions parallel those of the similar unit in the Kern County District Attorney's Office described above.

The Santa Clara County District Attorney's Office notes the following good practices aspects of effective law enforcement involvement in family abduction cases:

- ◆ It is very important for the prosecuting attorney and the investigator to strategize on child abduction cases.
- ◆ Time is of the essence in abduction cases. Law enforcement should act immediately to prevent removal of the child from the country and should use all available government resources toward that end.
- ◆ Parents can help prevent and resolve abduction cases by taking the following actions: (1) obtaining specific preventive measures in their custody orders, (2) keeping information about the child and other parent and a certified copy of the court order in a safe place, and (3) flagging passports (i.e., requesting that the State Department notify them upon receipt of a passport application for the child and/or prevent issuance of a passport).
- ◆ U.S. and foreign consulates may be of assistance to investigators when a child has been abducted abroad or there is reason to fear an abduction will occur.
- ◆ Law enforcement personnel, judges, members of the bar, and the public need to be educated about parental abduction.

For additional information, write Office of the District Attorney, Santa Clara County, 710 West Hedding Street, San Jose, CA 95110; phone 408-299-7500; or visit the Web site at santaclara-da.org/da-abduction.html.

California State Attorney General's Office and San Diego (California) District Attorney's Office

The District Attorney's office has bilingual staff that prepare the Hague applications for cases of children abducted from San Diego County to Mexico. The applications are provided in English and Spanish. The attention to detail, organization, language, and presentation could serve as a model for all Hague applications. The already beleaguered left-behind parent is not burdened with obtaining costly translations and putting together the entire file. The foreign Central Authority can begin processing the application without delay.

—Issues in Resolving Cases of International Child Abduction

California is the first State in which the State criminal justice system plays a critical role in using civil remedies to resolve parental abduction cases. Involvement in civil aspects of parental abduction extends to the State Attorney General's Office, which acts as a local "central authority" for Hague Convention cases involving abducted children located in California. Deputy attorneys general serve as State contacts for these cases. The State Attorney General's Office receives each Hague application from NCMEC, determines whether it is appropriate for handling by a district attorney, then routes it to the district attorney's office in the county where the child is believed to be located, and subsequently tracks the progress of the case. The Attorney General's Office also advises district attorney staff on specific issues related to Hague cases and serves as liaison with the U.S. Department of State, NCMEC, and Central Authorities in other countries.

Because of San Diego's border with Mexico, incoming and outgoing parental abduction/retention cases involving Mexico are common. The San Diego District Attorney's Office estimates that 10 percent of its parental abduction cases involve children taken to or from Mexico. Mexico became a party to the Hague Convention on October 1, 1991. Its judicial system operates quite differently from that of the United States. In handling cases of international parental abduction, the San Diego District Attorney's Office collaborates with the State Attorney General's Office and the local family court. Both the San Diego District Attorney's Office and the Attorney General's Office have taken a proactive stance in cases involving Mexico.

The California Attorney General's Office and the San Diego District Attorney's Office suggest the following good practices for criminal justice agencies handling Hague Convention cases:

- ◆ Streamline the Hague application process.
- ◆ Involve country experts on staff.
- ◆ Arrange for immediate hearings in Hague and custody cases.
- ◆ Create opportunities for cross-cultural judicial communication and training.

For additional information, write Office of the District Attorney, San Diego County, Hall of Justice, 330 West Broadway, San Diego, CA 92101; phone 619-531-4345;

or visit the Web site at www.co.san-diego.ca.us/cnty/cntydepts/safety/da/abduction/index.html.

U.S. Department of State, Office of Children's Issues

We are actively involved in trying to encourage interagency cooperation in international parental child abduction cases.

—Raymond E. Clore,
Former Director, Office of Children's
Issues and U.S. Central Authority,
U.S. Department of State

The Office of Children's Issues (OCI) in the Bureau of Consular Affairs of the U.S. Department of State serves as the U.S. Central Authority under the Hague Convention and is the point of contact for hundreds of parents in the United States and abroad whose children have been abducted from or to the United States. The OCI director is a foreign service officer. The director's position has traditionally rotated every 2 years. OCI's staff of consular officers work on international adoption policy issues in addition to international child abduction cases.

In its capacity as the U.S. Central Authority under the Hague Convention, OCI processes applications for return in outgoing cases (i.e., cases in which children have been wrongfully removed from the United States and retained in other Hague countries). The operational aspects of the Central Authority in incoming cases (i.e., cases in which children have been wrongfully removed from other Hague countries and retained in the United States) have been delegated to NCMEC. (For a discussion of NCMEC's changing role with regard to outgoing Hague cases, see the NCMEC good practices section on page 10.)

The OCI booklet *International Parental Child Abduction* (U.S. Department of State, 1997) summarizes what the State Department can and cannot do when a child is abducted. The publication is available through OCI (for information on how to contact OCI, see below) and can also be downloaded from the Web at travel.state.gov/int'lchildabduction.html.

OCI notes the following good practices aspects of its operations:

- ◆ Promotes prevention measures to deter international abductions.
- ◆ Communicates information about the Hague Convention to American courts.

- ◆ Suggests that an American parent whose child has been abducted by a family member to another country first seek voluntary return if feasible, then civil legal action, and lastly criminal remedies.
- ◆ Systematically encourages other countries to ratify the Hague Convention.
- ◆ Makes an ongoing effort to improve interagency cooperation and responsiveness to families affected by international abductions.
- ◆ Disseminates information to help parents when there is a risk of international abduction and when such an abduction has already occurred.
- ◆ Maintains computerized databases to analyze case dispositions and facilitate followup with parents and foreign Central Authorities.

For additional information, write U.S. Department of State, Office of Children's Issues, 2401 E Street NW., Room L127, Washington, DC 20037; phone 202-736-7000; or visit the Web site at travel.state.gov/officeofchildissues.html.

United Kingdom Child Abduction Unit

The comity of nations requires the prompt and consistent implementation of the Hague Convention. The United Kingdom Lord Chancellor's Child Abduction Unit plays a vital part in safeguarding the interests of children everywhere.

—Rt. Hon. Sir Stephen Brown,
President of the Family Division,
High Court, United Kingdom

The Child Abduction Unit (CAU) is the Central Authority for England and Wales for the two international conventions on child abduction to which the United Kingdom is a party: the Hague Convention and the European Convention on Recognition and Enforcement of Decisions Concerning Custody of Children and on Restoration of Custody of Children of 1980 (sometimes called "the Luxembourg Convention"). There are also Central Authorities in Northern Ireland and Scotland; the Lord Chancellor is the Central Authority for Northern Ireland, and the Secretary of State for Scotland is the Central Authority for Scotland. Although the United Kingdom has three Central Authorities, reflecting its three distinct legal jurisdictions, all three operate in the same way.

The CAU was created when the Hague Convention and the European Convention were incorporated into the law of the United

Kingdom by the Child Abduction and Custody Act of 1985, which came into force on August 1, 1986. The CAU is now the second busiest Central Authority in the world (after the United States).

The CAU was originally located in the headquarters of the Lord Chancellor's Department, but in April 1992, it moved to the Official Solicitor's Department. The Official Solicitor is a quasi-judicial figure with a long history in English law, primarily concerned with assisting the High Court and with protecting persons under a legal disability, minors (under the age of 18), and mental patients who are involved in legal proceedings. Much of the Official Solicitor's work involves representing children in disputes about their care, welfare, and education, and many of these cases have an international element—indeed, that element is one criterion for the Official Solicitor's becoming involved in a case. Such cases are almost always dealt with in the High Court. Although the office of the Official Solicitor carries out its duties independent of the government, it brings a good deal of experience to the task of running and supporting a Central Authority that deals with international child abduction.

The CAU is quite small; as of 1998, only two of its four staff members worked full time on child abduction cases. During 1997, the CAU dealt with 369 cases: 164 incoming and 205 outgoing. The structure set up by the Child Abduction and Custody Act of 1985 enables a small number of people to handle a large case load efficiently and effectively.

The CAU of England and Wales notes the following good practices aspects of its operations:

- ◆ The CAU is a small, single Central Authority situated in an organization that represents children in legal proceedings.
- ◆ Legal representation is immediately available to overseas applicants at no cost.
- ◆ All cases are presented in London by a small group of experienced solicitors and barristers.⁶
- ◆ All cases are heard by one of the judges of the High Court's Family Division, of whom there are now 17, including the president of the Family Division.
- ◆ Cases are listed for hearing very quickly, and the rules limit adjournments to no more than 21 days.

- ◆ A summary hearing, typically on the written pleadings (oral evidence is positively discouraged), is held.

For additional information, write The Child Abduction Unit, Official Solicitor's Department, Fourth Floor, 81 Chancery Lane, London WC2A 1DD, United Kingdom; phone 011-44-171-911-7047; or visit the Web site at www.offsol.demon.co.uk/intnchab.htm.

Missing Children's Registry, "Our Missing Children" Program, Canada

There is more than one way to skin a cat.

—Sergeant John W. Oliver, retired,
Missing Children's Registry,
Royal Canadian Mounted Police

Canada's Missing Children's Registry (MCR) is a special unit of the Royal Canadian Mounted Police. Established in 1986, the MCR was mandated to assist any law enforcement agency in locating and recovering a missing child. The MCR is also mandated to produce an annual report on Canada's missing children. This report keeps the general public informed about the number of missing children reported to Canadian police.

The MCR is part of a program called "Our Missing Children." This program involves officials from the Royal Canadian Mounted Police, the MCR, the Department of Revenue (Customs), the Department of Citizenship and Immigration, and the Department of Foreign Affairs and International Trade. The program is committed to locating missing and abducted children and returning them to their proper guardians.

Canada's MCR suggests the following good practices for agencies dealing with international parental abduction:

- ◆ Monitor points of arrival and departure.
- ◆ Promptly enter each missing child in the Canadian Police Information Computer (CPIC) and NCIC.
- ◆ Coordinate with other agencies in both countries.
- ◆ Coordinate with Central Authorities in efforts to locate the abducted child.
- ◆ Promote communication with nonprofit organizations.
- ◆ Get support from the airline industry.

- ◆ Use diplomatic pressure in cases involving countries that are not parties to the Hague Convention.

For additional information, write Royal Canadian Mounted Police, Missing Children's Registry, P.O. Box 8885, Ottawa, Ontario, Canada K1G 3M8; phone 877-318-3576 (toll free); or visit the Web site at ourmissingchildren.ca.

Recommendations for Practice

On the basis of the findings from this study, including the review of good practices, the authors of the full report made a number of recommendations for policy and practice. These are outlined below.

Judges

Judges should order preventive measures routinely and should use a variety of more restrictive measures depending on the level of risk and the likelihood of recovery. Specific recommendations include the following:

- ◆ In the custody order, specify that the child cannot be removed from the State or country without authorization.
- ◆ Prevent issuance of the child's passport or require that the child's passport and the passport of the parent at risk of abducting the child be surrendered.
- ◆ Order the parent at risk of abducting the child to post a bond that would be released to the left-behind parent in the event of an abduction.
- ◆ To reduce flight risk, order supervised visitation and/or no overnights with the child.
- ◆ As a condition for traveling with the child to another country or sending the child to a noncustodial parent in another country, require the parent at risk of abducting or not returning the child to obtain a "mirror" order from the foreign court, enforceable in that country, which parallels the provisions of the U.S. custody order.
- ◆ Order the parents to seek counseling or mediation with a professional who, in a culturally sensitive way, can help them address the issues raised by the ending of their marriage and by their child's mixed cultural heritage and can also offer them guidelines on how to parent from two households (perhaps separated by a great distance).

Training

Professionals handling parental abduction cases should receive further training. Specific recommendations include the following:

- ◆ Train law enforcement personnel and prosecutors regarding immediate actions required in cases of suspected international child abduction (e.g., entering the case into NCIC, issuing a warrant for unlawful flight to avoid prosecution, filing a Hague application, contacting the State missing children's clearinghouse). This training should be provided to all "front line" personnel, including patrol officers, support staff, and investigators.
- ◆ Train judges and attorneys in preventive measures that can be taken in cases when parental abduction is considered likely (e.g., supervised visitation, bonds). Provide judges with guidelines encouraging them to issue prompt and enforceable custody and visitation orders and to include in their orders warnings that violation may be a criminal offense and punishable by imprisonment.
- ◆ Train judges in all Hague countries in implementation of the Hague Convention and other intercountry agreements concerning child custody.
- ◆ Provide all professionals with indepth training that highlights the broad extent of the problem of international parental abduction, the specific difficulties faced in recovering children in cases of international abduction, the devastating impact that the abduction can have on the child, and the importance of maintaining supportive contact with left-behind parents. Professionals who could benefit from such training include law enforcement and prosecutorial personnel at the local, State, and Federal levels; judges and attorneys; and personnel in schools, child protective services agencies, State missing children's clearinghouses, Federal agencies (including the U.S. Department of State, U.S. Immigration and Naturalization Service, and U.S. Customs Service), family services organizations, and missing children's organizations.
- ◆ When possible, incorporate in training curriculums the experiences of left-behind parents, both as writers and presenters.

Hague Convention on the Civil Aspects of International Child Abduction

Changes should be made to improve the efficacy of the Hague Convention. Specific recommendations include the following:

- ◆ At the next special meeting of party countries at the Hague, raise issues relating to the lack of efficacy and uniformity in implementing the Hague Convention.
- ◆ Convene a multinational nongovernmental group, including parents, attorneys, researchers, and missing children's organizations, to discuss problems with the Hague Convention and ways to overcome them.
- ◆ Urge all Hague countries to locate their Central Authorities in Departments of Justice and have at least one attorney on staff. (Two-thirds of Central Authorities already use this model.)
- ◆ In the United States, recognize that efforts to improve handling of Hague Convention cases by educating attorneys and judges and recruiting *pro bono* attorneys are piecemeal solutions without long-term benefits. Instead, consolidate Hague proceedings in a single location before a knowledgeable judiciary and provide left-behind parents with representation by an experienced panel of attorneys, similar to the United Kingdom model. Alternatively, authorize U.S. attorneys (i.e., Federal prosecutors) to file Hague return petitions in Federal courts. These changes would expedite Hague proceedings, result in more uniform decisionmaking, and facilitate the prompt return of children abducted to or retained in the United States.
- ◆ Urge countries to consider models similar to the United Kingdom's. Consolidating cases in a centralized location can help prevent local bias, ensure that decisions are made by judges with experience in Hague cases, and alleviate problems that arise when inexperienced local judges treat Hague cases the same as custody cases.

U.S. Department of State, Office of Children's Issues

Dissatisfaction with the performance of OCI has been expressed by many left-behind parents and by a number of professionals in the field of missing children. Many complaints relate to the functioning

of the office. OCI should improve its efforts to help left-behind parents bring internationally abducted children home, regardless of whether the other country involved is party to the Hague Convention. Recommendations that may improve performance include the following:

- ◆ Make the OCI director a nonrotating foreign or civil service position. Having a new director every 2 years results in a high learning curve and limits opportunity to advocate for needed resources and to change staff responsibilities in ways that can improve performance.
- ◆ Increase the number of personnel⁷ to ensure a better staff-to-case ratio. Train staff to be more proactive in cases. Give parents more direct access to caseworkers (rely less on voice-mail). Increase periodic OCI-initiated contacts between staff and left-behind parents. Consider inviting former left-behind parents to brief staff on the type of contact that would be helpful.
- ◆ Seriously consider transferring the full responsibilities of the U.S. Central Authority under the Hague Convention to the U.S. Department of Justice. This would be in line with the majority of other Central Authorities. The U.S. Department of Justice could allocate to NCMEC direct case management for incoming and outgoing Hague and non-Hague cases, as the State Department currently does for incoming Hague cases only. This change would result in a more child-focused advocacy approach. Such an approach is consistent with the mission of the Missing and Exploited Children's Program in the U.S. Department of Justice and NCMEC but sometimes appears inconsistent with the State Department's diplomatic mission.
- ◆ Make efforts to recruit foreign diplomatic personnel from embassies in Washington, DC, to serve on an informal "working group" committed to overcoming barriers that prevent resolution of international abduction cases. Encourage foreign-based U.S. diplomats to establish similar informal groups in other countries, especially those with high numbers of abductions from or to the United States.
- ◆ Continue efforts to increase the number of countries that are party to the Hague Convention on the Civil Aspects of International Child Abduction.

- ◆ Be more willing to use diplomatic pressure or extradition to resolve abduction cases, particularly in non-Hague cases and in Hague cases involving countries from which few abducted children are returned.
- ◆ Provide parents with better assistance in finding low-cost translation services for the documents accompanying their Hague applications or foreign court proceedings.

Legal Assistance for Parents

The cost of attorneys in both the United States and foreign countries was extremely high for most of the left-behind parents surveyed, and very few had access to free legal assistance. Parents should have access to affordable attorneys and advocates. Recommendations include the following:

- ◆ Establish or expand *pro bono* and legal services programs for parents in cases of international child abduction.
- ◆ Use volunteers from Court Appointed Special Advocate (CASA) programs or similar child advocacy programs to work with State clearinghouses and nonprofit organizations to help left-behind parents access services and communicate with law enforcement personnel, prosecutors, and others. These volunteer advocates would also work to ensure services for children after reunification with parents.

Interagency and International Cooperation

The return of a child in a case of international parental abduction requires a high level of cooperation not only among governments but also among agencies within governments (police, courts, social services, foreign relations). The current level of cooperation should be increased. Recommendations include the following:

- ◆ Enhance cooperation among agencies frequently involved in cases of international child abduction. At the Federal level, the Senior Policy Group and its Working Group on International Parental Kidnapping were established to bring together representatives from the U.S. Departments of Justice and State to identify problems and work toward solutions in an effort to improve the Federal response to international parental abduction.
- ◆ Arrange for certain State offices that are working well with neighboring



countries to be the designated agencies to handle all cases involving those countries. This arrangement would centralize knowledge and expertise, build on existing relationships with foreign counterparts, and more efficiently secure the return of children abducted to and from those countries. For example, the California Deputy Attorney General's Office in San Diego could handle all cases between the United States and Mexico, and the New York State Missing and Exploited Children Clearinghouse could handle all cases between the United States and Canada. Such an expansion of caseload would require commensurate increases in funding for these agencies.

Legal and Procedural Changes

A number of existing laws and regulations create obstacles that make the location and recovery of internationally abducted children very difficult. In some cases, existing regulations actually make an international abduction easier to accomplish. Some existing laws and regulations should be changed. Recommended changes include the following:

- ◆ Revise existing U.S. departure regulations to require that adults accompanying minors exiting the country must show proof of permission from all parents or guardians or a valid court order indicating that they alone can give permission.

- ◆ Change current rules regarding issuance of passports to minors so that all parents or guardians must give permission unless a current court order specifies that permission of only one parent is required. (The law was recently changed to require both parents to sign a passport application for children under age 14, and new regulations will elaborate the specifics of this requirement.)

Support Networks for Parents

Many of the left-behind parents surveyed said they felt isolated. Others said they were interested in providing help to other left-behind parents. Support groups and networking opportunities for parents should be created.

One recommendation is to establish or expand national, regional, and local support networks for left-behind parents. Such efforts might include a "buddy" program that pairs a parent whose child was previously abducted (and may or may not have yet been recovered) with a parent whose child has recently been abducted to the same country; support groups for parents whose children have been abducted to the same country or category of countries (e.g., Hague countries, Islamic countries); and an Internet listserv for left-behind parents. (Since the study report was written, OJJDP has supported the establishment of Team HOPE, which matches victim parents with parent volunteers who have had similar international child abduction experiences.)

Conclusion

Although this study is the first comprehensive examination of international parental abduction of children, the findings are primarily qualitative and/or descriptive and should therefore be interpreted with caution. It is also important to note that the findings are based on the perceptions of victims (the left-behind parents) in these cases. Neither the alleged abductors nor the abducted children were surveyed for their perspective on the issue. Additionally, it has been a few years since the study was completed in 1998, so some of the experiences of parents may be different today. Despite these limitations, however, the findings of this study provide policymakers and practitioners with a greater understanding of the obstacles faced by parents in these cases and the strategies that communities

can use to prevent these abductions and to assist in the recovery of abducted children. Perhaps most importantly, the findings of this study provide OJJDP and other agencies with guidelines to use in developing resources and programs for all who must deal with these devastating cases—children, left-behind parents, law enforcement, prosecutors, and courts.

For Further Information

Additional information about parental abduction is available from the organizations listed below. Brief descriptions of selected publications available from each organization are also provided.

Organizations

Office of Juvenile Justice and Delinquency Prevention (OJJDP)
Child Protection Division
202-616-3637
202-353-9093 (fax)
ojjdp.ncjrs.org

National Center for Missing and Exploited Children (NCMEC)
703-274-3900
703-274-2222 (fax)
missingkids.com

U.S. Department of State, Office of Children's Issues (OCI)
202-736-7000
202-663-2674 (fax)
travel.state.gov/officeofchildissues.html

National Center for Prosecution of Child Abuse (NCPCA)
703-739-0321
703-549-6259 (fax)
ndaa-apri.org/apri/NCPCA/Index.html

American Bar Association Center on Children and the Law (ABA CCL)
202-662-1720
202-662-1755 (fax)
abanet.org/child

Publications

OJJDP. The following documents are available from OJJDP (see Publications on its Web site or call the Juvenile Justice Clearinghouse at 800-638-8736) or from the National Criminal Justice Reference Service (visit ncjrs.org or call 800-851-3420).

Addressing Confidentiality of Records in Searches for Missing Children (NCJ 155183). This Report makes recommendations concerning law enforcement agencies'

access to records maintained by schools, hospitals, child welfare agencies, domestic violence shelters, and runaway shelters. The Report also covers information release procedures and includes a checklist for maximizing record access from service providers. The Report's appendixes contain additional information and relevant statistical data on the confidentiality of records in searches for missing children, jurisdictions that allow record access or impose reporting requirements in missing children cases, and State laws affecting record access.

The Criminal Justice System's Response to Parental Abduction (NCJ 186160). This Bulletin summarizes primary findings from a study of the criminal justice system's response to parental abduction. Funded by OJJDP and conducted jointly by the American Bar Association Center on Children and the Law and Westat, the study examined all aspects of the system's response, including the reporting of the incident, investigation of the case, location and recovery of the child, and criminal prosecution of the abductor. The Bulletin reports results from the study's national survey of law enforcement agencies and prosecutors, site visits, and case file reviews and presents implications for legal, programmatic, and policy reforms.

Early Identification of Risk Factors for Parental Abduction (NCJ 185026). This Bulletin presents the design and findings of four OJJDP-funded studies on preventing family abductions. The findings provide information regarding the risk factors associated with parental kidnapping and strategies that can be used to intervene with at-risk families.

Family Abductors: Descriptive Profiles and Preventive Interventions (NCJ 182788). This Bulletin describes preventive interventions, such as counseling, conflict resolution, and legal strategies, that seek to settle custody and access disputes for families identified as at risk for parental abduction.

A Family Resource Guide on International Parental Kidnapping (NCJ 190448). This guide presents practical and detailed advice about preventing international kidnapping and increasing the chance that children who are kidnapped or wrongfully retained will be returned. It provides descriptions and realistic assessments of the civil and criminal remedies available in international parental kidnapping cases,

explains applicable laws and identifies both the public and private resources that may be called upon when an international abduction occurs or is threatened, and prepares parents for the legal and emotional difficulties they may experience.

International Parental Kidnapping: A Law Enforcement Guide (forthcoming). This guide provides practical information on the public and private resources and services that are available to assist law enforcement in international parental abduction cases. It explains applicable laws, defines agency roles and responsibilities, describes criminal and civil remedies, examines methods for prevention and interception, and discusses important issues and procedures to be addressed during an international parental abduction case.

Issues in Resolving Cases of International Child Abduction (NCJ 182790). This Report documents a lack of uniformity in the application of the Hague Convention across countries. It includes case histories, survey findings on left-behind parents, selected practices in international family abduction cases, and recommendations for the judicial and legal systems.

Obstacles to the Recovery and Return of Parentally Abducted Children (Report: NCJ 144535; Research Summary: NCJ 143458). These publications present the results of a 2-year study of the legal, policy, procedural, and practical obstacles to the location, recovery, and return of children abducted by a noncustodial parent. They include recommendations to overcome each obstacle and extensive appendixes that describe the pros and cons of existing legal procedures for enforcing a custody order, sample forms to be used with existing legal procedures, and summaries of both civil and criminal appellate decisions.

Parental Abduction: A Review of the Literature (Available online only: ojjdp.ncjrs.org/pubs/missing.html#186160). This online resource summarizes current research and literature related to the primary issues involved in parental abduction.

Prevention of Parent or Family Abduction Through Early Identification of Risk Factors (NCJ 182791). Based on analyses of data from several California studies related to child abductions by a noncustodial parent, this Report outlines a set of characteristics of parents who abduct their children and presents indepth sociodemographic and legal information about the families of abducted children.

Using Agency Records To Find Missing Children: A Guide for Law Enforcement (NCJ 154633). This Summary focuses on procedures for obtaining and using the records of certain types of human services providers to find missing children. It examines the use of, access to, barriers to, and limitations of records from schools, medical care providers, runaway shelters, and domestic violence shelters.

When Your Child Is Missing: A Family Survival Guide (NCJ 170022; Spanish Version: NCJ 178902). This guide, written by parents and family members who have experienced the disappearance of a child, explains how parents can best participate in the search for a missing child. It discusses the parents' relationship with law enforcement, examines issues related to the media, and presents practical information about distributing fliers and photos, organizing volunteers, and managing monetary donations.

NCMEC. The following documents are available from NCMEC (see Education & Resources on its Web site or call 800-843-5678).

Family Abduction. This handbook guides parents through the civil and criminal justice systems, explains the laws that will help them, outlines prevention methods, and provides suggestions for after-care following the abduction. It thoroughly details search and recovery strategies and contains advice for attorneys, prosecutors, and family court judges handling these cases.

International Forum on Parental Child Abduction: Hague Convention Action Agenda. This report details the findings of a forum held in September 1998 to study the Hague Convention on the Civil Aspects of International Child Abduction. It offers 12 action/agenda items to help strengthen implementation of the Hague Convention.

"The Kid Is With a Parent, How Bad Can It Be?": The Crisis of Family Abductions. This issue brief discusses the seriousness of the problem of family abduction, considers whether the problem is growing, and examines the challenges and opportunities this crime poses to policymakers.

Missing and Abducted Children: A Law Enforcement Guide to Case Investigation and Program Management. This guide, authored by a team of 38 professionals from local, State, and Federal agencies, outlines a standard of practice for law enforcement officers handling several

types of missing child cases, including runaways, throwaways, family/nonfamily abductions, and disappearances in which the circumstances are unknown.

When Your Child Is Missing: A Family Survival Guide. Also available from OJJDP; see above for description.

OCI. The following document is available from OCI (call 202-736-7000) or may be downloaded from the Web at travel.state.gov/int'lchildabduction.html.

International Parental Child Abduction. This booklet summarizes what the State Department can and cannot do when a child is abducted. It also includes information on steps to guard against international child abduction, ways to search for a child who is abducted abroad, considerations in settling cases out of court, use of the Hague Convention to settle cases, legal solutions when the Hague Convention does not apply, and considerations in filing criminal charges against an abductor.

NCPCA. The following documents are available from NCPCA (see Publications on its Web site).

Charging the Parental Kidnapping Case. This monograph assists prosecutors in determining appropriate charges and sentencing recommendations. It notes that an aggressive investigative and prosecutorial approach sends the message that parental kidnapping is a serious crime with serious consequences for both victims and abductors and recommends that prosecution should be seriously considered in every parental kidnapping case.

Investigation and Prosecution of Parental Abduction, 2000 (Training Conference Notebook). This notebook contains training materials compiled for the 2000 NCPCA Conference, Investigation and Prosecution of Parental Abduction.

Parental Kidnapping, Domestic Violence and Child Abuse: Changing Legal Responses to Related Violence. This monograph assists investigators and prosecutors in developing appropriate responses to the interrelated crimes of parental kidnapping, domestic violence, and child abuse.

ABA CCL. The following documents are available from ABA CCL (see Issues/Parental Kidnapping on its Web site).

Hague Child Abduction Convention Issue Briefs. This 1997 material consists of four issue briefs that can help attorneys handle cases that fall under the Hague

Convention on the Civil Aspects of International Child Abduction.

The Hague Convention: A Curriculum for American Judges and Lawyers. This 1997 publication explains how the Hague Convention can be used effectively within the United States in international parental kidnapping cases.

Parental Kidnapping Prevention and Remedies. This 1997 material is designed to help attorneys better understand parental abduction cases and applicable laws. It includes practical tips on protections that can be placed in child custody orders that may help prevent an abduction, tips that lawyers can give their parent clients, a review of possible legal actions that can be taken on parents' behalf, and governmental resources that can be used to help in these cases.

Parental Kidnapping Law Reform Package. This package, produced in 1996, contains three proposed State laws related to parental abduction that can be adopted by State legislatures. The laws are the Parental Kidnapping Crime Act, Missing Children Record Flagging Act, and Tortious Interference With Child Custody and Visitation Act.

Endnotes

1. Having ties to another country was identified as one of six risk profiles for parental child abduction in a study conducted by Johnston and Girdner (1998).
2. NISMART 2, a followup study funded by the Office of Juvenile Justice and Delinquency Prevention, is currently under way.
3. The 393-page full report, *Issues in Resolving Cases of International Child Abduction*, is available from the Juvenile Justice Clearinghouse. For additional information, see page 17.
4. In any given country, "incoming" cases involve children who have been abducted to, or wrongfully retained in, that country, and "outgoing" cases involve children who have been wrongfully removed from that country or wrongfully retained in another country. "Return" cases seek the child's return, usually to the country of habitual residence. "Access" cases seek to arrange visitation with the child.
5. Outcome options for Hague proceedings are as follows: (1) judge orders child returned to applicant country, (2) judge denies petition for return (child remains

in responding Central Authority's country), (3) child is voluntarily returned, (4) other (case is withdrawn or settled by parents, child is not located, or case is pending). Study findings revealed great variation in case outcomes. The percentage of return orders, for example, ranged from an average of 5 percent to 95 percent, depending on the responding Central Authority.

6. In England, there are two types of practicing lawyers: barristers and solicitors. In general, barristers engage in advocacy (trial work) and solicitors perform office work.

7. As of 1998, when the study report was written, an increase in staff was expected because the responsibilities of the U.S. Central Authority would expand once the Hague Convention on Intercountry Adoption was enacted. (Since the report was written, staff size has increased and the Adoption Convention has been ratified and implementing legislation enacted.) It is not known, however, how this will affect the amount of attention given to parental abduction cases.

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E-mail: tellncjrs@ncjrs.org

EXHIBIT 7

Subject: Status of your FOIA Request
From: Mehta, Jason P (MehtaJP@state.gov)
To: avik_101@yahoo.com;
Cc: David.Pinchas@usdoj.gov;
Date: Monday, November 14, 2011 10:03 AM

Mr. Kulkarni –

In response to your voicemail from last week seeking an update on the FOIA processing of your case, please note that we have received your correspondence of October 28 and November 2. We note that you have not provided a third party authorization for the release of records. Accordingly, we will process your request to the maximum extent we can, but we may be required to withhold any personally identifiable information as appropriate under the Privacy Act. I will advise you when there is an update.

Thank you!
Jason

Jason Mehta

Office of the Legal Adviser

U.S. Department of State

+1 (202) 647-2227

MehtaJP@state.gov

SBU
This email is UNCLASSIFIED.

85
B

EXHIBIT 8

Affidavit of Rajesh Nerurkar

I, Rajesh Nerurkar, declare as follows:

1. I am over the age of 18, am competent to testify and if called to testify, would testify the statements contained. I agree to make myself available and to testify at deposition and trial concerning the topics contained herein.
2. I met Ms. Madhavi Thakur in September 1996 in Mumbai, India. We were soon engaged to be married. While Madhavi and I were dating in India, I came to know her family – her parents Mrs. Urmila and Mr. Ramakant Thakur as well as her sister, Ms. Neelam Thakur a.k.a. Ms. Neelam Kulkarni. I met the Thakurs on multiple occasions. I also came to know Neelam's son, Soumitra. Soumitra lived with Neelam and the Thakur family. Madhavi lived with them as well. I came to know that Neelam used to live in Orange County, California when she was married to Mr. Avinash Kulkarni and that Soumitra was born in [REDACTED] [REDACTED] in 1990. During this time, I came to know that Neelam was divorced from Avinash Kulkarni.
3. I specifically recall a meeting with Madhavi and Neelam in a restaurant in Mumbai in or about October 1996. At that time, in the presence of Madhavi, I asked Neelam about her divorce. She told me, with Madhavi present, that she left her marital home in Orange County for India in October 1990 without her husband's knowledge and that she brought with her their six-month old son, Soumitra. Neelam told me that she got help from her friends in Orange County during her return to India. Neelam identified Mrs. Meera Upasani and Mrs. Sunila Kulkarni of Orange County as very good friends. She identified those two women as friends who aided her during her return to India from Orange County with Soumitra. During this meeting in the restaurant, Neelam also told me that Mrs. Meera Upasani helped her in acquiring a passport for the infant son. Neelam told me that Mrs. Meera Upasani provided transportation to her while applying for Soumitra's passport. As per Neelam's account, Mrs. Meera Upasani provided her own address for the passport to be delivered and then handed it to Neelam after receiving it in mail. Neelam also told me that her parents and Mrs. Meera Upasani arranged for one-way airline tickets to India for Neelam and the infant son, Soumitra. Neelam also told me that, on October 15, 1990, Mrs. Sunila Kulkarni picked up Neelam and the infant son from their residence after Avinash had left for work. Neelam

informed me that Mrs. Sunila Kulkarni drove her to the Los Angeles International Airport for her flight to India. Neelam also stated that Mrs. Meera Upasani and Mrs. Sunila Kulkarni were knowledgeable of her return described above. Neelam told me that the two women were aware that Neelam was leaving without her husband's knowledge or consent. Neelam told me that her parents, Mrs. Meera Upasani and Mrs. Sunila Kulkarni had planned not to let Avinash know about Neelam's whereabouts until she was half way through her journey to India.

4. Madhavi was present during the entire October 1996 conversation with Neelam and was in a position to hear all of Neelam's statements.
5. Madhavi and I were married in December 1996 and lived in Mumbai, India for a month. My employment brought me to Orange County, California in January 1997. Madhavi followed me to Orange County in April 1997. Before we came to the U.S., Neelam gave us contact information for Mrs. Meera Upasani and Mrs. Sunila Kulkarni. She asked us to get in touch with the two women for social purposes as they were her friends.
6. Soon after I arrived in Orange County, I contacted Mrs. Meera Upasani and Mrs. Sunila Kulkarni over the phone. I introduced myself as Neelam's brother-in-law. I met the Upasani and the Kulkarni families in person. After Madhavi arrived in the U.S. in April 1997, we started interacting with those two families socially. We met them separately on several occasions.
7. In one of our meeting at the Upasani's home, Mrs. Meera Upasani confirmed that Neelam was a very good friend of hers. Mrs. Upasani told me that, when Neelam lived in Orange County in 1989-1990, the Upasani and Neelam and her husband interacted and met regularly. According to Mrs. Upasani, all of them were part of a social group that got together on social events.
8. In one of our get-togethers in 1997, Mrs. Meera Upasani confirmed Neelam's entire account of how Neelam returned to India in 1990. Mrs. Upasani confirmed her role as well as Mrs. Sunila Kulkarni's role in helping Neelam and Soumitra to leave the United States for India without Avinash finding out. She specifically discussed her role in acquiring a U.S. passport for the infant son, in helping to get one-way airline tickets for Neelam and the infant son, and Sunila Kulkarni's role in arranging transportation to drive Neelam to the LAX airport on the day of Neelam's departure. Mrs. Upasani also told me that she helped Neelam obtain

Soumitra's passport and had the passport sent to her own home. Mrs. Upasani also told me that she later delivered the passport to Neelam without Avinash's knowledge as the plan was not to inform Avinash about Neelam's intention to return to India with Soumitra. Madhavi as well as Mr. Mohan Upasani were present at this 1997 get-together.

9. Neelam and Soumitra visited us in Orange County for about two months in 1998. Madhavi and I were living in Mission Viejo at the time.
10. Soon after she left for India in 1998, Neelam asked Madhavi and me to assist her in executing the divorce decree she got from an Indian court in a U.S. court. Avinash was paying her child support at the time, but Neelam wanted to collect alimony retroactively and permanently as well. I wanted to help Madhavi's family and agreed to be Neelam's attorney-in-fact. I arranged for an attorney (Ms. Bette Adelman) to represent Neelam in the Superior Court of Arizona. Avinash was a resident of Phoenix, Arizona at the time. Neelam executed a power of attorney in September 1999 and we filed the lawsuit in Arizona in February 2000. That lawsuit lasted about one year.
11. During the time lawsuit in Arizona was pending, I contacted Mrs. Meera Upasani, to assist in the lawsuit as she had supposedly witnessed Neelam's alleged mistreatment by Avinash. I expected her to help Neelam. But Mrs. Meera Upasani stayed away from this case.
12. Madhavi was aware of the Arizona lawsuit. She discussed its details regularly with Neelam as well as with me. She reviewed various documents filed on behalf of Neelam as well as documents filed by Avinash. Madhavi was in possession of some documents related to the lawsuit until 2007. I am not sure if she currently has those documents. The Superior Court of Arizona dismissed Neelam's petition with prejudice.
13. I learned that Mrs. Sunila Kulkarni visited Neelam in India between 1997 and 1998 and stayed with her.
14. I separated from Madhavi in 2007 and we were divorced in 2008.
15. On various occasions between 1998 and 2001, I have seen how Soumitra was kept away from his father. Neelam claimed that she did so because Avinash did not pay alimony and child support retroactively. Neelam and her parents have accused Avinash of abusing Neelam while she was living in the U.S with him in 1990. They have repeatedly told Soumitra that his father had mistreated Neelam. Soumitra has always called his grandparents "Jai" (Mom) and "Baba" (Dad).

I declare under the penalty of perjury under the laws of the states of California and North Carolina, and under the laws of the United States that the foregoing is true and correct.

Rajesh 03/25/2011

Rajesh Nerurkar

EXHIBIT 9

inbox for avi_kulkarni_us@yahoo.com

Yahoo! - My Yahoo! Options - Sign Out - Help

Mail Addresses Calendar Notepad

Shopping sprees



Reply Reply All Forward as attachment

Download Attachments

Delete Prev Next Inbox

Choose Folder Move

From: "soumitra kulkarni" <imsoumi@hotmail.com> | Block address | Add to Address Book

To: avi_kulkarni_us@yahoo.com

CC: imsoumi@hotmail.com

Subject: Re: Message for Neelam

Date: Fri, 02 Mar 2001 11:45:16 -0000

A poem by Soumitra

FATHER

A father is someone,
Who can take care of his kid,
Who is always there,
In child's every need.

He is someone with whom
A child can share his thought,
For he is the person,
Who thinks of his kid a lot.

When you want to harass your mom,
He can be your partner
And when you have to face angry mom,
He can be the safest shelter.

A father is a person of whom,
A child thinks very high,
And for a father, of course,
His child is the apple of his eye.

Though I don't have a father,
I can surely say this,
When your grandpa becomes your father,
Your father, you never miss!

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<http://www.hotmail.com>.

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EXHIBIT 10



RE: Follow up on Kulkarni Matter

Sunday, September 14, 2008 8:42 PM

From: "Avi Kulkarni" <avik_101@yahoo.com>
To: "Litchenberg, Paul" <Paul.Litchenberg@da.ocgov.com>
Cc: "Jim Bacin" <Jim.Bacin@da.ocgov.com>

Hi Paul,

I talked to Ms. Lanae Jones from the NCMEC on Thursday last week. She arranged for me to talk to Ms. Karen Strickland who is the Director of the organization Find The Children in Los Angeles. Ms. Strickland seemed to think that I can't do much at this time, especially since my son is already eighteen.

In the meanwhile, I talked to my son on Thursday. He was to leave for San Jose in a day or two, definitely by the weekend. He refused to see me before he left. So I do not have any way of contacting him today – just the way things were for the majority of last eighteen years. He mentioned that he might contact me in November when he visits his aunt in Orange County. This aunt was very much involved in the abduction eighteen years ago. How should I accept this situation? That is why I keep talking about prosecution of those who aided and abetted the abduction. That would only be fair.

Thanks for your help,

Avi

--- On **Wed, 9/10/08, Litchenberg, Paul** <Paul.Litchenberg@da.ocgov.com> wrote:

From: Litchenberg, Paul <Paul.Litchenberg@da.ocgov.com>
Subject: RE: Follow up on Kulkarni Matter
To: avik_101@yahoo.com
Date: Wednesday, September 10, 2008, 12:23 PM

Hello Avi,
I have already made arrangements for counselor intervention. You should be contacted soon (if not already) by a representative of NCMEC to arrange some help for you and your son.
At this point we are concentrating only on Neelam. The decision to pursue anyone else in this matter would rely on DDA Jim Bacin.
Keep me informed of the counseling arrangements. If you have not heard from them by tomorrow, please let me know.
Paul

Paul Litchenberg
Investigator
Family Protection/Child Abduction
(714)347-8832



Think before you print

From: Avi Kulkarni [mailto:avik_101@yahoo.com]
Sent: Tuesday, September 09, 2008 9:40 PM
To: Litchenberg, Paul

95
B

Subject: Follow up on Kulkarni Matter

Hi Paul,

A quick follow up on two items...

You had mentioned that you would arrange for a counselor for my son and I. I find very little chance for any progress on that front at this time. My son has been avoiding me. If I call his aunt's place and he actually answers the phone, he gets rid of me in a couple of minutes. He says he would call back, but never does. Or if his aunt answers the phone, she tells me that he isn't there. The only time he has called me is when he thought I might be able to help his mother. He has refused to see me. He'll be leaving for Stanford over the weekend. I do not expect to have any contact with him or even have his contact info (such as phone number or e-mail address). I'll still try my best to work on it. But I'm going to need some help.

On a different note... I have been mentioning to you the involvement of other people in my child's abduction. When you got a warrant for my ex-wife's arrest, you told me that you won't pursue any of them at the time. You were of the opinion that they would come out of the woodwork if and when she was arrested. Now that she has been arrested, would you be pursuing that angle? I believe that it will be important to do so in order to establish the truth. I truly need that to happen.

I appreciate your attention to this matter.

Thanks,
Avi

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EXHIBIT 11



RE: Contact my son

Monday, December 8, 2008 10:46 AM

From: "Litchenberg, Paul" <Paul.Litchenberg@da.ocgov.com>

To: avik_101@yahoo.com

Avi,

At this point I really don't have any resources to assist you. I only have the same contact information you have. I will have Jim ask the defense attorney for updated info.

Paul

Paul Litchenberg

Investigator

Family Protection/Child Abduction

(714)347-8832

From: Avi Kulkarni [mailto:avik_101@yahoo.com]

Sent: Thursday, December 04, 2008 5:59 AM

To: Litchenberg, Paul

Subject: Contact my son

Hi Paul,

Have you talked to my son as part of your investigation? Would you happen to have contact info for him? And could you help me to contact him?

Since our interaction back in September, there has been no contact between us. He had told me that once he settles down at Stanford, he would contact me to tell me about his new contact info. He hasn't. He also had told me that he would be visiting his aunt in Orange County in November (Thanksgiving, I suppose) and that he would call me then. He didn't.

I sent an e-mail to his old e-mail address -- the one he used when he lived in India. There was no response. The e-mail didn't bounce, so the address still exists.

I just want to check on him. Can you help?

Thanks,

Avi

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EXHIBIT 12



Re: How are you?

Monday, February 9, 2009 2:06 AM

From: "soumitra kulkarni" <soumitra_90@yahoo.com>
To: avi_kulkarni_us@yahoo.com

Henceforth, please communicate through my mother's attorney.

--- On Sat, 2/7/09, Avi Kulkarni <avi_kulkarni_us@yahoo.com> wrote:

From: Avi Kulkarni <avi_kulkarni_us@yahoo.com>
Subject: How are you?
To: "soumitra kulkarni" <soumitra_90@yahoo.com>
Date: Saturday, February 7, 2009, 1:37 AM

Hi Soumitra,

How are you doing? How is college?

If you want to talk to me, give me a call. I would like to talk to you, too.

Take care.

EXHIBIT C



United States Department of State

Washington, D.C. 20520

MAY 2 2012

Case No. 201108461

Mr. Avinesh B. Kulkarni
826 Applewilde Drive
San Marcos, CA 92078

Dear Mr Kulkarni:

A Department of State Appeals Review Panel, whose members are listed in an enclosure to this letter, has considered your appeal of January 2, 2012, for the release of one document withheld in full by the Department in the course of responding to your request under the Freedom of Information Act (FOIA).

The Panel has carefully considered the grounds on which you based your appeal. It has decided that the withholding of that document in its entirety must be upheld, because the disclosure of the contents of that document would constitute an unwarranted invasion of the personal privacy of the individual who is the subject of the record in question. Therefore, the information in the document is protected from release in its entirety under FOIA exemption (b)(6), 5 U.S.C. § 552(b)(6).

No non-exempt, meaningful information can be segregated from the exempt material and released.

In this regard, you have not complied with the Department of State's published regulations regarding third party requests for access to records in Title 22 of the Code of Federal Regulations (22 CFR § 171.12(a) and § 171.32(c)(1)), as required by the Freedom of Information Act, 5 U.S.C. § 552(a)(3)(A)(ii). These sections of the law can be found in most public libraries or Online.

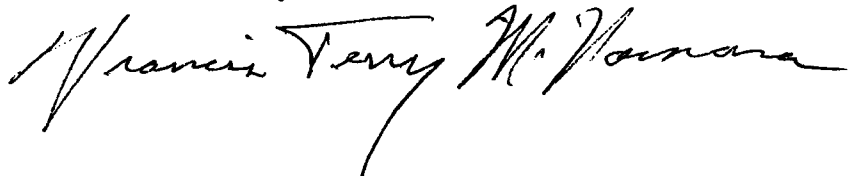
However, your appeal letter indicated that your ex-wife was arrested and convicted by making a guilty plea under California Penal Code Section 278 which provides prosecution for felony child abduction. If the District Attorney

- 2 -

in California, with whom your letter indicates that you have been in contact, wants to prosecute a person or persons who might have aided and abetted in the kidnapping of your infant son in 1990, that law enforcement authority could make a request for the 1990 passport record at issue in this appeal under the provisions of the Privacy Act governing conditions of disclosure, namely 5 U.S.C. § 552a(b)(7), and the Department of State could comply with a proper request for law enforcement purposes.

The Panel's decision represents the final decision of the Department of State. If you wish to seek judicial review of this determination, you may do so under 5 U.S.C. § 552(4)(B).

Sincerely,

A handwritten signature in black ink, reading "Francis Terry McNamara". The signature is fluid and cursive, with the first name "Francis" and last name "McNamara" clearly legible. The middle name "Terry" is written in a more abbreviated, cursive style.

**FRANCIS TERRY MCNAMARA
CO-CHAIRMAN, APPEALS REVIEW PANEL**

Enclosures:
As stated.



DEPARTMENT OF STATE

APPEALS REVIEW PANEL MEMBERS

Case Control No.: 201108461

Chairman:

Ambassador Francis Terry McNamara

Members:

Ambassador William Ryerson

Ambassador Harry E.T. Thayer

EXHIBIT D

International Parental Child Abduction India

GENERAL INFORMATION: India is not a signatory of the Hague Convention on the Civil Aspects of International Parental Abduction; therefore, left-behind parents must rely on other avenues to recover their children from India. Once a child has been abducted to India, remedies are very few. India does not consider international parental child abduction a crime, and the Indian courts rarely recognize U.S. custody orders, preferring to exert their own jurisdiction in rulings that tend to favor the parent who wants to keep the child in India. For these reasons, it is often very difficult for left-behind parents in the United States to obtain any access to a child who has been abducted to India. In the rare scenario that a case is resolved, it is usually due to an agreement between the parents, rather than the result of court orders or arrest warrants. The State Department can help by attempting welfare and whereabouts visits; however, these visits may only be conducted with the consent of the child's physical guardian.

Cultural factors often impact child custody decisions in India. For example, Indian courts rarely grant custody to a parent residing outside of India, even if both the child and the taking parent are American citizens. Additionally, many fathers complain that the courts tend to favor mothers when determining custody.

India does require the signature of both parents for an Indian passport to be issued to children younger than 18 years. India also requires exit permits for children.

For information concerning travel to India, including information about the location of the U.S. Embassy and Consulates, health conditions, currency and entry regulations, and crime and security, please see the Department of State's Country Specific Information.

LEGAL SYSTEM: India uses a Common Law legal system. In this type of system, a court's decision on a legal principle becomes the controlling authority for future, similar cases heard by the same court and courts of equal or lower rank.

Searches for missing children in India generally begin with the local senior police officers. The Ministry of Home Affairs (MHA) Foreigners Division takes an interest in cases involving non-Indian citizen children or parents.

Absent a court order, married parents have equal rights of custody to their minor children. Absent a court order, the rights of either parent to custody of children born out-of-wedlock is based on the courts' determination of the welfare of the child, though mothers are generally given custody of children under the age of five.

Bangalore and Mumbai have designated family courts that handle divorce and custody. In other areas, the regular sessions or lower courts handle divorce and custody. India uses the term "custody order," but the term "sole custody" is not used or accepted.

RETAINING AN ATTORNEY: A list of attorneys in India is available from the U.S. Embassy or a

U.S. Consulate in India. The attorneys list will include those who specialize in family law.

India offers free or reduced fee legal aid services to those who qualify. The Legal Aid Cells throughout the country determine whether a person qualifies for assistance. Lawyers for those who qualify are selected from a group of attorneys who volunteer to provide their services pro bono. Read more information about Legal Aid services in India.

CITIZENSHIP & PASSPORT MATTERS: According to a provision of the Citizen Act of 1955, Indian citizenship can be acquired by birth, naturalization or descent. Normally, children automatically acquire Indian citizenship at birth, regardless of where they are born, if one parent is a citizen of India, though India does not recognize dual citizenship. A child born in a country where citizenship is automatically conferred at birth, such as the United States, could not claim Indian citizenship. The gender of the Indian parent does not make a difference.

Because India does not recognize dual nationality, as soon as a child is documented as a U.S. citizen, that child has no claim to Indian citizenship unless he or she renounces the U.S. citizenship upon reaching the age of eighteen.

A parent can prevent issuance of an Indian passport to their child by lodging a complaint with the passport office. However, the ultimate decision lies with the passport officer who will substantiate the grounds for the complaint. India does not allow a child to be entered on a parent's passport. Also, a child cannot travel through the region on a national ID card without processing through customs (i.e. travel through the EU).

Exit Permits: An Indian visa covers both entry and exit. The stamp placed in the passport by immigration authorities upon arrival indicates the amount of time that can be spent in India for a particular visit. If the time limit is exceeded, the visitor must appear at the Ministry of Home Affairs and the Foreigners' Regional Registration Office (FRRO) to resolve payment of a fine and to request an extension that will permit exit from the country.

The consent of a non-traveling parent is not required for the child to depart India. Likewise, the father does not have to approve the children's departure from India.

MEDIATION: Mediation is not a term or process used in custody disputes, though occasionally the court will appoint a non-governmental organization or a social agency to work with the families.

HAGUE ABDUCTION CONVENTION: India is not a party to the Hague Abduction Convention.

CIVIL REMEDIES: There is no formal process for registering a foreign custody order with the courts, and U.S. custody orders are not automatically enforced in India. If one is presented, the Indian court is likely to take it into consideration; however, in practice, U.S. court decisions are almost never upheld in Indian courts.

With respect to conditions of custody, custody decisions are made "in the best interests of the child," using as the primary consideration the welfare of the child: the ability to support the child

financially, any history of abuse, etc. If a citizen of India marries an American citizen in a civil ceremony outside of India, a religious court does not have jurisdiction over custody matters. Hindus have no religious courts.

India has laws authorizing courts to award custody in the case of divorce, but the laws do not contain substantive guidance for custody determinations – case law does (see *Sharma v. Sharma*, Supreme Court of India – February 16, 2000). For the laws related to custody, please see the India Code Legislation Web site and search for “The Guardians and Wards Act” and “Hindu Minority and Guardianship Act” under “short title.”

CRIMINAL REMEDIES: Parental child abduction is not a criminal offense in India. Although India will extradite its own citizens subject to an Interpol arrest notice if the crime is covered by the U.S. Extradition Treaty with India, which was signed in 1997 and went into effect in 1999, this is not an available remedy in parental child abduction cases because India does not recognize it as a crime. Interpol India indicates that it will search for a missing child based on a yellow notice.

VISITATION RIGHTS: Family courts in Mumbai and Bangalore and sessions (or lower) courts in the other parts of India determine visitation/access rights. The safety and security of the child are taken into consideration in determining visitation/access rights. If a parent is denied visitation rights which have been authorized, he/she can approach the court and will be supported.

EMBASSY CONTACT INFORMATION:

U.S. Embassy in New Delhi : <http://newdelhi.usembassy.gov/>

U.S. Consulate in Chennai: <http://chennai.usconsulate.gov/>

U.S. Consulate in Kolkata: <http://kolkata.usconsulate.gov/>

U.S. Consulate in Mumbai: <http://mumbai.usconsulate.gov/>

Embassy of India in Washington, DC: <http://www.indianembassy.org>

I (a) PLAINTIFFS (Check box if you are representing yourself <input checked="" type="checkbox"/> AVINASH B. KULKARNI		DEFENDANTS UNITED STATES DEPARTMENT OF STATE																									
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) AVINASH B. KULKARNI 826 APPLEWILDE DRIVE, SAN MARCOS, CA 92078 858.344.0237		Attorneys (If Known)																									
II. BASIS OF JURISDICTION (Place an X in one box only.) <input type="checkbox"/> 1 U.S. Government Plaintiff <input type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) <input checked="" type="checkbox"/> 2 U.S. Government Defendant <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.) <table style="width:100%; border: none;"><thead><tr><th></th><th style="text-align: center;">PTF</th><th style="text-align: center;">DEF</th><th></th><th style="text-align: center;">PTF</th><th style="text-align: center;">DEF</th></tr></thead><tbody><tr><td>Citizen of This State</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td style="text-align: center;"><input type="checkbox"/> 1</td><td>Incorporated or Principal Place of Business in this State</td><td style="text-align: center;"><input type="checkbox"/> 4</td><td style="text-align: center;"><input type="checkbox"/> 4</td></tr><tr><td>Citizen of Another State</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td style="text-align: center;"><input type="checkbox"/> 2</td><td>Incorporated and Principal Place of Business in Another State</td><td style="text-align: center;"><input type="checkbox"/> 5</td><td style="text-align: center;"><input type="checkbox"/> 5</td></tr><tr><td>Citizen or Subject of a Foreign Country</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td style="text-align: center;"><input type="checkbox"/> 3</td><td>Foreign Nation</td><td style="text-align: center;"><input type="checkbox"/> 6</td><td style="text-align: center;"><input type="checkbox"/> 6</td></tr></tbody></table>			PTF	DEF		PTF	DEF	Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State	<input type="checkbox"/> 4	<input type="checkbox"/> 4	Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5	Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3	Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6
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VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.) 5 USC 552 (FOIA) & 552a(PA), U.S. CONST. AMENDMENTS, CAL. CONST. ART. I, SEC. 28(a)(4), RELEASE OF INFORMATION ABOUT CHILD ABDUCTION																											
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SACV12-00980 CJC (MLGx)

FOR OFFICE USE ONLY: Case Number: SACV11-01389 JST (ANx)

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? ☐ No ☒ Yes
 If yes, list case number(s): SACV11-01389 JST (ANx)

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? ☐ No ☒ Yes
 If yes, list case number(s): SACV11-01389 JST (ANx)

Civil cases are deemed related if a previously filed case and the present case:

- (Check all boxes that apply) ☒ A. Arise from the same or closely related transactions, happenings, or events; or
☐ B. Call for determination of the same or substantially related or similar questions of law and fact; or
☐ C. For other reasons would entail substantial duplication of labor if heard by different judges; or
☐ D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

- (a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named plaintiff resides.
☐ Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	SAN DIEGO

- (b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** named defendant resides.
☒ Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country

- (c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which **EACH** claim arose.
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
ORANGE. (PLAINTIFF AND HIS INFANT SON WERE RESIDENTS OF ORANGE COUNTY AT THE TIME OF CHILD ABDUCTION.)	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER): *Blulman* Date JUNE 18, 2012

Notice to Counsel/Parties: The CV-71 (JS-44) Civil Cover Sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form, approved by the Judicial Conference of the United States in September 1974, is required pursuant to Local Rule 3-1 is not filed but is used by the Clerk of the Court for the purpose of statistics, venue and initiating the civil docket sheet. (For more detailed instructions, see separate instructions sheet.)

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Cormac J. Carney and the assigned discovery Magistrate Judge is Marc Goldman.

The case number on all documents filed with the Court should read as follows:

SACV12- 980 CJC (MLGx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====

NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

☐ **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

☒ **Southern Division**
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

☐ **Eastern Division**
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

Name & Address:

AVINASH B. KULKARNI
826 APPLEWILDE DRIVE
SAN MARCOS, CA 92078

FOR OFFICE USE ONLY

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

AVINASH B. KULKARNI

CASE NUMBER

SACV12-00980 CJC (MLGx)

PLAINTIFF(S)

v.

UNITED STATES DEPARTMENT OF STATE
(USDOs)

SUMMONS

DEFENDANT(S).

TO: DEFENDANT(S):

FOR OFFICE USE ONLY

A lawsuit has been filed against you.

Within 60 days after service of this summons on you (not counting the day you received it), you must serve on the plaintiff an answer to the attached ☒ complaint ☐ amended complaint ☐ counterclaim ☐ cross-claim or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff's attorney, AVINASH B. KULKARNI, whose address is 826 APPLEWILDE DRIVE, SAN MARCOS, CA 92078. If you fail to do so, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

Clerk, U.S. District Court

Dated: JUN 18 2012

By: ROLLS ROYCE PASCHAL
Deputy Clerk

(Seal of the Court)

[Use 60 days if the defendant is the United States or a United States agency, or is an officer or employee of the United States. Allowed 60 days by Rule 12(a)(3)].

FOR OFFICE USE ONLY